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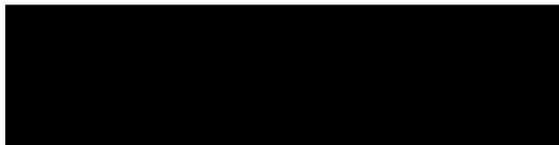
U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
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U.S. Citizenship  
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FILE:

MSC 05 309 11184

Office: LOS ANGELES

Date: **AUG 15 2008**

IN RE: Applicant:



APPLICATION: Application for Temporary Resident Status under Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the National Benefits Center. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, you no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application for temporary resident status pursuant to the terms of the settlement agreements reached in *Catholic Social Services, Inc., et al., v. Ridge, et al.*, CIV. NO. S-86-1343-LKK (E.D. Cal) January 23, 2004, and *Felicity Mary Newman, et al., v. United States Immigration and Citizenship Services, et al.*, CIV. NO. 87-4757-WDK (C.D. Cal) February 17, 2004 (CSS/Newman Settlement Agreements), was denied by the District Director, Los Angeles, California. The decision is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the application will be remanded for further consideration.

The applicant submitted a Form I-687, Application for Status as a Temporary Resident Under Section 245A of the Immigration and Nationality Act (Act), and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, on August 5, 2005. On November 17, 2005, the director issued a Notice of Intent to Deny (NOID) the application indicating that the applicant had not provided documentation establishing eligibility for Temporary Resident Status. The applicant submitted a response to the director's NOID. On October 6, 2006, the applicant was interviewed and the director determined, based on the applicant's testimony, that the applicant had failed to establish unlawful continuous presence in the United States since prior to January 1, 1982 through May 4, 1988 because his absence from the United States during the January 1, 1982 through May 4, 1988 time period exceeded 180 days. The director acknowledged that in the affidavit submitted, the affiant attested and concurred with the applicant's testimony that the applicant resided in the United States from June 1981 to January 1988.

On appeal, the applicant asserts: that he first entered the United States without inspection in June 1981 with his parents; that he resided continuously in the United States from June 1981 to the middle of November 1986; that in the middle of November 1986 he departed the United States and returned three days after Christmas in 1986, an absence of less than 40 days; that his parents filed for amnesty in August 1987; that an Immigration and Naturalization Service (INS) officer, after examining his parents' application stated that the family did not qualify because they had departed the United States without obtaining advance parole; and that the applicant and his family left the United States in January 1988 because they could not legalize their presence. The applicant observes that the CSS/Newman Settlement Agreements require that an applicant establish his or her entry prior to January 1, 1982 and continuous unlawful status, except for brief absences, from before 1982 until the date the applicant was turned away by the INS when attempting to apply for legalization. Counsel contends that his absence from the United States in January 1988 after his parents were turned away by the INS when trying to apply for legalization is not relevant to establishing his eligibility for this benefit.

The applicant correctly observes that an applicant for temporary resident status must establish entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status since such date and through the date the application is filed. Section 245A(a)(2) of the Act, 8 U.S.C. § 1255a(a)(2) and that he or she has been continuously physically present in the United States since November 6, 1986 with the regulatory clarification that the applicant must have been physically present in the United States from November 6, 1986 until the date of filing the application. See Section 245A(a)(3) of the Act, 8 U.S.C. § 1255a(a)(3) and 8 C.F.R. § 245a.2(b)(1).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and physical presence, in accordance with the regulation at 8 C.F.R. § 245a.2(b)(1), "until the date of filing" shall mean until the date the applicant (or his parent or spouse) attempted to file a completed Form I-687 application and fee or was caused not to timely file. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

The AAO finds that the director improperly considered the applicant's absence from the United States after the date the applicant (or his parent) attempted to file a completed Form I-687 application in August 1987. An applicant for temporary residence under the CSS/Newman Settlement Agreements is not required to maintain residency for the "statutory period from January 1, 1982 until May 4, 1988;" but rather from January 1, 1982 through the date the applicant attempted to file a Form I-687 application or was caused not to timely file. Thus, the director's October 6, 2006 decision is in error and is withdrawn. Although the director's decision will be withdrawn, the applicant in this matter has not established eligibility for this benefit.

The applicant has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, is admissible to the United States under the provisions of section 245A of the Act, and is otherwise eligible for adjustment of status. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.2(d)(5).

Although the regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). In evaluating the evidence, *Matter of E-M-* also stated that "[t]ruth is to be determined not by the quantity of evidence alone but by its quality." *Id.*

Even if the director has some doubt as to the truth, if the applicant submits relevant, probative, and credible evidence that leads the director to believe that the claim is "probably true" or "more likely than not," the applicant or petitioner has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (1987) (defining "more likely than not" as a greater than 50 percent probability of something occurring). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

In this matter, the submitted evidence consists of one form affidavit, from the applicant's uncle listing the applicant's addresses, including an address during the requisite time period. This affidavit fails to provide details including where the affiant met the applicant in the United States, the nature and frequency of their contact, and whether the applicant was absent from the United States during the requisite period. The

affiant fails to provide details regarding the claimed relationship with the applicant or to provide substantive information indicating personal knowledge of the applicant's 1981 entry to the United States or the circumstances of the applicant's residence over the years of the applicant's claimed residence. This affidavit has minimal probative value.

The AAO finds that the director only referred to this affidavit and did not make a determination as to its probative value. Further, the record does not contain other information sufficient to support a conclusion that the applicant entered the United States before January 1, 1982 and resided in the United States through the date the applicant (or his parent) attempted to file a completed Form I-687 application and fee or was caused not to timely file. As such, the matter must be remanded for a determination on this issue.

The absence of sufficiently detailed documentation to establish the applicant's claim of continuous residence for the requisite period precludes the AAO from approving this claim. Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the applicant's reliance upon one affidavit, a document with minimal probative value, he has failed to meet his burden of proof and failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through the date he attempted to file a Form I-687 application, as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M--*, *supra*. However, as the director did not directly address this issue in the decision, the applicant did not have notice of the deficiencies in the matter in order to adequately address the issue on appeal.

The director's October 6, 2006 decision will be withdrawn and the matter remanded for further action and consideration pursuant to the above. If the director's decision is adverse to the applicant, the matter will be certified to the AAO for review.

**ORDER:** The director's October 6, 2006 decision is withdrawn and the matter is remanded for further action and consideration pursuant to the above. If the director's decision is adverse to the applicant, the matter will be certified to the AAO for review.