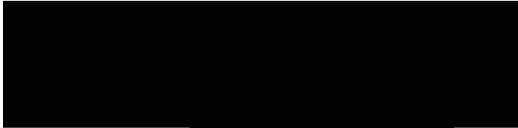




U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED]  
MSC-06-098-11437

Office: LOS ANGELES

Date: JUL 15 2008

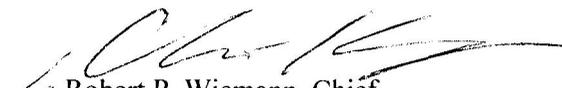
IN RE: Applicant: [REDACTED]

APPLICATION: Application for Status as a Temporary Resident pursuant to 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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

  
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. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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. The director determined that the applicant had not established by a preponderance of the evidence that she had continuously resided in the United States in an unlawful status for the duration of the requisite period. The director noted that the applicant had been absent from the United States for over 45 days and in excess of the 180 days aggregate amount allowed by law. The director denied the application, finding that the applicant had not met her burden of proof and was, therefore, not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, the applicant admits that she was absent from the United States from December 1983 until August 1984, but asserts that her failure to timely return to the United States was due to an accident that required lengthy medical treatment in the Philippines.

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). The applicant must also establish that he or she has been continuously physically present in the United States since November 6, 1986. Section 245A(a)(3) of the Act, 8 U.S.C. § 1255a(a)(3). The regulations clarify that the applicant must have been physically present in the United States from November 6, 1986 until the date of filing the application. 8 C.F.R. § 245a.2(b).

For purposes of establishing residence and physical presence under the CSS/Newman Settlement Agreements, the term “until the date of filing” in 8 C.F.R. § 245a.2(b) means until the date the applicant attempted to file a completed Form I-687 application and fee or was caused not to timely file during the original legalization application period of May 5, 1987 to May 4, 1988. See CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

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 period, 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.* at 80. Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the petitioner 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, 431 (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.

The applicant shall be regarded as having resided continuously in the United States if at the time of filing an application for temporary resident status,<sup>1</sup> no single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, through the date the application is considered filed, unless the applicant can establish that due to emergent reasons the return to the United States could not be accomplished within the time period allowed, the applicant was maintaining residence in the United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.2(h)(1).

If the applicant's absence exceeded the 45-day period allowed for a single absence, it must be determined if the untimely return of the applicant to the United States was due to an “emergent reason.” Although this term is not defined in the regulations, *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988), holds that emergent means “coming unexpectedly into being.”

At issue in this proceeding is whether the applicant has submitted sufficient evidence to establish that her failure to timely return to the United States within 45 days was due to emergent reasons.

During her interview with Citizenship and Immigration Services (CIS) on November 8, 2006, the applicant stated under penalty of perjury that she first entered the United States in December of 1978 as a tourist and that she remained in the country until December of 1983 when she traveled to the Philippines to visit family. The applicant further stated that she returned to the United States in August of 1984. On her Form I-687,

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<sup>1</sup> Under the CSS/LULAC Settlement Agreements, this refers to the time the applicant attempted to file or was caused not to timely file the application.

Application for Status as a Temporary Resident, the applicant indicated at part # 32 of the application that her absence from the United States from December of 1983 to August of 1984 was for a family visit and to work.

On appeal, the applicant asserts her claim of eligibility for temporary resident status and provides documentation in an attempt to establish that an emergent reason was the cause of her prolonged absence from the United States. The applicant submitted a doctor's affidavit and his note or "Certification" on his prescription form with his letterhead. The doctor, [REDACTED] General, Cancer and Laparoscopic Surgery, stated that the applicant was under his treatment while she was confined to the Metropolitan Hospital/Medical Center in the Philippines for blunt injuries sustained from a vehicular accident. He also stated that the applicant was confined at the hospital from January 6, 1984 to February 12, 1984 but continued to be treated by him as an out-patient. He further stated that she needed prolonged physical therapy and he advised her not to travel until he gave her clearance to travel in August of 1984.

The applicant also submitted her own declaration dated December 8, 2006, in which she asserts that she suffered an injury when she visited the Philippines which necessitated extensive medical treatment, and that she returned to the United States in August of 1984 after she had recovered from her injury. The applicant asserts that her absence was involuntary. Here, although the applicant submitted statements from her doctor, she has failed to submit any records that the doctor would have consulted or other official records such as the accident report, hospital records, discharge notice, or physical therapy records. No records have been provided to demonstrate when the accident occurred, the nature of her injuries, the establishment that provided her physical therapy, the type of physical therapy she received, or the dates she received the therapy.

In addition to the doctor's statements, the applicant submitted eight additional affidavits from relatives and friends on appeal. Five of these affidavits confirmed her claim that she suffered an accident and was hospitalized in the Philippines in 1984. However, absent medical records or other documentation of the claimed accident and treatment, these statements have minimal probative value.

The applicant's claim of an emergent reason for her delayed return has not been sustained.

In her decision to deny, the director noted inconsistencies in the affidavits submitted in support of the applicant's claim of residence. The applicant did not address those inconsistencies on appeal. The AAO will not decide this issue here, however, because continuous unlawful residence is broken if an absence from the United States is more than 45 days on any one trip unless timely return could not be accomplished due to emergent reasons. 8 C.F.R. 245a.2(h)(1)(i). In light of the applicant's admission that she was absent from the United States from December 1983 to August 1984, a period of more than 45 days, and her failure to provide sufficient evidence that her return was delayed due to emergent reasons, any continuous unlawful residence she may have had in the United States during the requisite period has been broken. Due to her absence, the applicant has failed to demonstrate continuous unlawful residence in the United States for the requisite period. The applicant is therefore ineligible for temporary resident status under section 245A of the Act on that basis.

**ORDER:** The appeal is dismissed. This decision constitutes a final notice of ineligibility.