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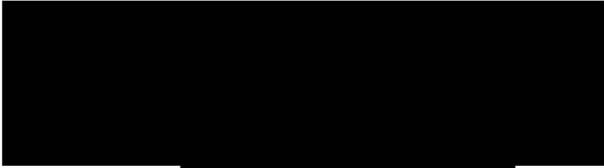
U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
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Services

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FILE: [REDACTED] Office: SAN JOSE  
MSC 06 069 14306

Date: **JUL 24 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.

A handwritten signature in black ink that reads "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, San Jose. 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 he had continuously resided in the United States in an unlawful status for the duration of the requisite period. The director denied the application, finding that the applicant had not met his 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 submits additional information and asks that his appeal be considered. The applicant notes that the director stated, in part, in his decision denying the applicant's claim that the applicant had failed to respond to the director's Notice Of Intent To Deny (NOID) within the 30 days permitted for response, and, therefore, the application was denied. The applicant submitted a time-stamped copy of his NOID response which indicates that it was received within 30 days (October 13, 2006) of the director's NOID, which is dated September 14, 2006. The applicant's appeal indicates that he believes that he has established his unlawful residence for the requisite time period, that he is qualified under Section 245A of the Act and the CSS/NEWMAN settlement agreements, and that his application for temporary resident status should be granted.

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 245(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)(1).

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)(1) 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. 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 issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he resided in the United States for the duration of the requisite period. Here, the applicant submitted the following documentary evidence:

#### Affidavit

The applicant submitted two sworn affidavits from [REDACTED], both of which contain the same information. Ms. [REDACTED] states that she personally knows the applicant, having met at a Filipino party. She states that she has knowledge that the applicant lived in California from January of 1981 until February of 1983, as the two stayed “in touch during those years.” The applicant further indicates that the longest period of time during which she has not seen the applicant is from June of 1983 through February of 2004. The affiant provides no additional information.

#### Applicant's Sworn Statement

- The applicant provided a sworn statement to a United States immigration officer on September 7, 2000. In that statement the applicant states that he was outside the United States from 1986 until February of 1988.

#### Additional Information Provided By The Applicant

- In response to the director's NOID, the applicant provided an unsworn statement which stated that the applicant entered the United States without inspection from Canada before January of 1982. He further states that he left the United States "sometime" in 1986 to attend to his ailing father. (The applicant provided a copy of his father's death certificate which indicates that his father died on October 17, 1986.) The applicant states that he applied for legalization under the amnesty program in March of 1988.
- The applicant provided a copy of a "Legalization Questionnaire" which provided the following relevant information:<sup>1</sup> the applicant attempted to apply for legalization between May 5, 1987 and May 4, 1988, but his application was returned to him by an immigration officer because he had traveled outside the United States.

The record of proceeding contains no additional evidence supporting the applicant's claim of unlawful residence in the United States during the requisite time period.

The applicant has submitted a single affidavit, his sworn statement and unsworn assertions in support of his application. Although not required, he has not provided any contemporaneous evidence of residence in the United States for the duration of the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. The witness affidavit ( ) provided by the applicant did not provide detailed evidence establishing how the affiant knew the applicant, the details of their association or relationship, or detailed accounts of their ongoing association establishing a relationship under which the affiant could be reasonably expected to have personal knowledge of the applicant's residence, activities and whereabouts during the requisite period covered by the applicant's Form I-687. To be considered probative, affidavits must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. The affiant's statement must be presented in sufficient detail to establish that a relationship does in fact exist, how the relationship was established and sustained, and that the affiant does, by virtue of that relationship, have knowledge of the facts alleged. Further, the applicant's sworn statement alone is not sufficient to sustain the burden of proof in these proceedings. 8 C.F.R. § 245a.2(d)(6). The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of his 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

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<sup>1</sup> The "Legalization Questionnaire" is not an official United States government form.

applicant's reliance upon documents with minimal probative value, it is concluded that the witness affidavit, sworn statement of the applicant, and his unsworn assertions fail to establish continuous residence in an unlawful status in the United States during the requisite period.

The applicant made a sworn statement to a U.S. immigration officer wherein the applicant stated that that he departed the United States in October of 1986 to attend to his ailing father, and returned to this country in February of 1988. The Form I-687, which was signed by the applicant under penalty of perjury, states, in part, that the applicant resided in the United States from: 1980 until October of 1986; and then from February of 1988 until November of 1990. This information is consistent with the aforementioned sworn statement given to a U.S. immigration officer, and establishes that the applicant was absent from the United States during the requisite period for approximately one year and four months.

The regulation at 8 C.F.R. § 245a.2(6)(h)(i) states as follows:

(h) *Continuous residence.* (1) For the purpose of this Act, an applicant for *temporary resident status* shall be regarded as having resided continuously in the United States if, at the time of filing of the application:

(i) 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 for temporary resident status is filed, unless the alien can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed;

....

In view of the above regulation, the applicant has also failed to establish continuous residence for the requisite period because he was not residing in the United States from October of 1986 until February of 1988, and this absence from the country exceeded, by his own admission, 45 days. The record does not establish that the applicant's return to the United States within the time permitted for "continuous residence" absences could not be accomplished due to emergent reasons. Although the term "emergent reasons" is not defined by regulation, *Matter of C-*, 19 I. & N. Dec. 808 (Comm. 1988), holds that emergent means "coming unexpectedly into being." The applicant, in this instance, provides no evidence of emergent reasons causing his prolonged absence from the United States. The record does not establish that the length of the absence over 45 days was caused by an event which came "unexpectedly into being." The applicant left this country to attend to his ailing father, who died on October 17, 2006. The applicant remained outside the United States for approximately 16 months following the death of his father. For this additional reason, the application may not be approved.

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that he has continuously resided in an unlawful status in the United States for the requisite period as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M--*, *supra*. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis.

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