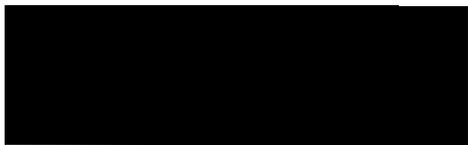




U.S. Citizenship  
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FILE: [REDACTED]  
MSC-06-091-14029

Office: LOS ANGELES

Date: **SEP 10 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. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if your case 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.

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 (together comprising the I-687 Application). The director denied the application because the applicant had failed to prove by a preponderance of the evidence that she had continuously resided in the United States for the requisite period. Specifically, the director found that the applicant had testified before an immigration officer that she left the United States in January of 1984 and was absent from the United States for approximately four months. The applicant also testified that she departed the United States again in 1986 and was absent for approximately one year, returning in August of 1987. The director, therefore, found that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, the applicant states that she has established her eligibility for temporary resident status, but does not dispute the director's findings with respect to her absences from the United States.

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)(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 shall be regarded as having resided continuously in the United States if at the time the application for temporary resident status is considered filed, as described above pursuant to the CSS/Newman Settlement Agreements, no single absence from the United States has exceeded 45 days, and the aggregate of all absences has not exceeded 180 days during the requisite period 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 a residence in the United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.2(h).

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."

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).

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, "[t]ruth is to be determined not by the quantity of evidence alone but by its quality." *Id.* 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 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 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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that she resided in the United States for the duration of the requisite period. Here, the applicant has not met her burden of proof.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on December 30, 2005. At part #32 of the Form I-687 Application, which requires applicants to list all absences from the United States, the applicant indicated that she traveled to the Philippines from August 1986 to September 1986, from February 1997 to December 1997 and from October 2000 to December 2000. However, when the applicant was interviewed by an immigration officer on September 25, 2006, she testified that she was absent from the United States from January 1984 to July 1984. The applicant also testified

that she departed the United States in 1986 and returned to the United States in August of 1987. The applicant has not disputed these absences on appeal.

Continuous unlawful residence is broken if an absence from the United States is more than 45 days on any one trip unless return could not be accomplished due to emergent reasons. 8 C.F.R. § 245a.2(h)(1)(i). “Emergent reasons” has been defined as “coming unexpectedly into being.” *Matter of C*, 19 I&N Dec. 808 (Comm. 1988).

The applicant’s admitted absences from the United States from January 1984 to July 1984 and from 1986 until August of 1987 are clear breaks in any period of continuous residence she may have established. Each absence is greater than 45 days and the aggregate of these absences is well over 180 days. As the applicant has not provided any evidence that her return to the United States could not be accomplished due to “emergent reasons,” she 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.

Even aside from the issue of his absence during the requisite period, the applicant has failed to provide sufficient documentation to establish by a preponderance of the evidence that he resided continuously in the United States throughout the requisite period.

The applicant has submitted the following affidavits in support of her application for temporary resident status:

- An affidavit from [REDACTED] and [REDACTED] dated September 20, 2006. The affiants state that the applicant stayed with them “sometime in 1980.” The affiants do not provide any details such as how they came to meet the applicant, or the nature and frequency of their contact with the applicant during the requisite period. In light of these deficiencies this affidavit has little probative value and will be given minimal weight as evidence of the applicant’s residence in the United States during the requisite period.
- An affidavit from the applicant’s father, [REDACTED] dated September 21, 2006. The affiant states that the applicant left the Philippines for the United States in 1980. The affiant states that he met up with the applicant again in 1984 when he and the rest of his family moved to the United States. The affiant does not claim to have personal knowledge of the applicant’s residence in the United States during the requisite period, as it appears that he himself was not in the United States until 1984. Further, the affiant does not provide details regarding the frequency or nature of his contact with the applicant during the requisite period. Given these deficiencies, the affidavit has little probative value and will be given minimal weight as evidence of the applicant’s residence in the United States during the requisite period.
- Affidavits from [REDACTED] and [REDACTED] all dated September 20, 2006. The affiants are the applicant’s sisters. Each affiant states that the applicant was residing in United States “before my family migrated in March 1984.” The

affiants do not state precisely when the applicant entered the United States, and it is not clear from these affidavits that the affiants have personal knowledge that the applicant resided in the United States during the requisite period. Lacking such relevant detail, these affidavits can be afforded only minimal weight as evidence of the applicant's residence in the United States during the requisite period.

- An affidavit from [REDACTED] dated September 23, 2006. The affiant, who was born on February 2, 1980, states that the applicant has been her baby sitter since she was born. Obviously, the affiant cannot plausibly claim to have recollections of the applicant since her birth. Further, the affidavit lacks details regarding the frequency of the affiant's contact with the applicant. As a result, this affidavit is found to lack sufficient detail to confirm that the applicant resided in the United States during the requisite period.

An affidavit from [REDACTED] dated September 22, 2006. The affiant states that the applicant has been in the United States since 1981 and that the applicant has been a close family friend since that time. The affidavit lacks details such as the circumstances under which the affiant came to know the applicant or how he dates her initial acquaintance with the applicant. Lacking such relevant detail, the affidavit can be afforded only minimal weight as evidence of the applicant's residence in the United States during the requisite period.

- An affidavit from [REDACTED] The affiant states that the applicant has been in the United States since 1981 and that the applicant has been a close family friend since that time. The affiant does not explain not explain how he came to meet the applicant or how he dates his initial acquaintance with the applicant. The affiant also fails to explain the nature and frequency of his contact with the applicant. In light of these deficiencies this affidavit has little probative value and will be given minimal weight as evidence of the applicant's residence in the United States during the requisite period.

In summary, the applicant has not provided sufficient evidence in support of his claim of residence in the United States relating to the entire requisite period. 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 her 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 admitted absences from the United States and her reliance upon documents with minimal probative value, it is concluded that she has failed to establish continuous residence in an unlawful status in the United States for the requisite period 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.