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**U.S. Citizenship  
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FILE: [REDACTED]  
MSC 06 081 14845

Office: LOS ANGELES

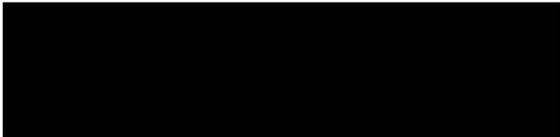
Date: **SEP 18 2008**

IN RE: Applicant:



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:



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, appearing to be "Robert P. Wiemanh".

Robert P. Wiemanh, 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 matter is now before the Administrative Appeals Office 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 (the 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 during the requisite period.

On appeal, the applicant asserted that her absences from the United States, and her account of those absences, are misstated in the decision of denial.

Subsequently the applicant submitted a letter, in which she stated,

Dear immigration officer thank you your consideration of my case apperently I have been approve recently for my green card. Please disregard my recently application for second opponion on my case.

[Errors in the original.]

The applicant's letter indicates that she wished to withdraw the instant appeal. However, because Citizenship and Immigration Service (CIS) records contain no indication that the applicant actually adjusted to Lawful Permanent Resident status, this office will issue a decision on the merits of the case.

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 Immigration and Nationality Act (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.

As to the requirement of continuous residence in the United States from January 1, 1982 through the date the application is filed, the regulation at 8 C.F.R. § 245a.2(h)(1) provides that an applicant shall be regarded as having resided continuously if no single absence during the salient period was longer than 45 days and the aggregate of all absences does not exceed 180 days.

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 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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.2(d)(6).

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 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, 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 instant Form I-687 application was submitted to CIS on December 20, 2005. In it, the applicant stated that her only absence from the United States since January 1, 1982 was during June of 1987

when she visited a sick relative in Mexicali, Mexico. She also stated, on that form, that her last entry into the United States was during June of 1987.

The pertinent evidence in the record is described below.

- The record contains an Award of Merit given to the applicant by [REDACTED] for being the March Student of the Month during the 1977 – 1978 school year.
- The record contains guidance reports issued to the applicant by [REDACTED] in Morgan Hill, California on September 9, 1983, October 24, 1983, February 16, 1984, March 25, 1984, and November 16, 1984.
- The record contains report cards, issued to the applicant on February 7, 1984 and April 9, 1984, by Live Oak High School, in Morgan Hill, California.
- The record contains a transcript issued to the applicant showing her attendance at high school during the 1982 - 1983, 1983 - 1984, and 1984 - 1985 school years. That transcript indicates, at the top-left corner, that Live Oak High School issued it. At the bottom it indicates that Central High School issued it. The relationship of Live Oak High School and Central High School is unknown to this office.
- The record contains a document which the applicant signed on October 31, 1984 acknowledging the requirements of a writing lab at Central High School in Morgan Hill, California.
- The record contains progress reports issued to the applicant on October 19, 1984 and April 25, 1985 by Central High School in Morgan Hill, California.
- The record contains student registration and health insurance forms executed on September 4, 1984 and November 14, 1985, showing that the applicant's sister, [REDACTED] attended a Gilroy, California public school at that time and lived in Gilroy. A section provided for listing siblings living at home shows that the applicant also lived at the family home in Gilroy.
- The record contains a Certificate of Achievement that the San Jose Job Corps awarded to the applicant on March 14, 1986 for completion of a consumer education course.
- The record contains a printout from the California Department of Motor Vehicles showing that the applicant was the registered owner of an automobile and that the registration was due to expire on October 16, 1987.

The documents from Fred Baker Elementary School, Live Oak High School and/or Central High School, the San Jose Job Corps, the California Department of Motor Vehicles, and the applicant's sister's school in Gilroy all appear to be valid contemporaneous documents and are accorded very

high evidentiary weight for the proposition that the applicant resided in the United States as indicated on those forms.

- The record contains photographs purporting to show the applicant on various dates. Where the photographs were taken is not indicated or evident. Those photographs do not support the applicant's claim of residence in the United States during the requisite period.
- The record contains a previous Form I-687 of the applicant on which she stated that she visited Mexico from June 10, 1987 through June 30, 1987 because her uncle died. She further stated that her last entry into the United States was on December 15, 1987, which indicates that she was absent from the United States at least one more time.
- The record contains a Form I-485 Application to Adjust Status that the applicant signed on May 30, 2002 and submitted on June 6, 2002. On that application the applicant stated that she last entered the United States on December 15, 1987.
- The record contains a photocopy of a declaration signed by the applicant on March 16, 1991.<sup>1</sup> That statement indicates that the applicant was absent from the United States from May 1986 to August 1986, and from December 1987 to August 1988.
- The record contains a statement that the applicant gave, on August 4, 2006, to a CIS officer. The applicant stated that she left the United States for a few days during 1982. The officer asked whether her 1991 statement pertinent to her absence from the United States beginning during May of 1986, is correct. The applicant stated that it is. She further stated that she left the United States on more than one occasion but does not remember the dates.
- The record contains a sworn statement, dated October 26, 2006, from the applicant. In it, she stated that she visited her uncle in Mexicali in approximately 1987. She further stated that she left the United States again during 1988 or 1989, but that she was unsure of the year. She stated that on that occasion she was absent for two or three weeks.
- The record contains a photocopy of an affidavit executed on July 2, 1993 by [REDACTED], the applicant's brother. [REDACTED] stated that he and his sister visited either an aunt or an uncle in Mexicali, Mexico from June 10, 1987 to June 30, 1987. [REDACTED] also stated that he knows that his sister was in the United States prior to 1981
- The record contains a printout of the applicant's criminal record, obtained from the Federal Bureau of Investigation pursuant to a search using the applicant's fingerprints. That record

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<sup>1</sup> The upper half of that document indicates the absences and is signed by the applicant. The lower half begins, "I [the applicant] . . ." and is written from the applicant's point-of-view, but was signed by [REDACTED] the applicant's brother, apparently by mistake, and notarized. This office will not rely on the lower half of that document.

shows that, on September 11, 2000, at San Ysidro, California, the applicant was charged with a violation of 8 U.S.C. § 1325, attempted illegal entry into the United States.

The record contains no other evidence pertinent to the applicant's residence in the United States during the salient period.

In the Notice of Decision, dated August 9, 2006, the director denied the application, noting that the applicant had admitted to being absent from the United States from May 1986 to August 1986, a period that encompassed more than 45 days within the period of requisite residence, and also admitted that she had been absent from the United States from December 1987 to August 1988.

On appeal, the applicant asserted that she had not stated, at her August 4, 2006 interview, that she was absent from the United States from December 1987 to August 1988, and that she was not, in fact, absent during that period. The applicant did not address her admitted absence from May 1986 to August 1986.

This office notes, initially, that the decision did not indicate that the applicant made that statement, itself, at her August 4, 2006 interview, but rather that, on that date, she confirmed that her previous statement regarding her absences was true. The statement that the applicant was absent from May 1986 to August 1986 and December 1987 to August 1988 is evidenced in the record by the statement that the applicant signed on March 16, 1991, and that she confirmed on August 4, 2006.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate entry into the United States prior to January 1, 1982, and continuous residence during the requisite period.

This office finds that the evidence that the applicant was in the United States prior to January 1, 1982 is absolutely compelling. This office finds that the contemporaneous evidence submitted demonstrates that the applicant resided in the United States throughout most of the requisite period.

The remaining question is when and for how long the applicant was absent from the United States during the period of requisite residence, and whether, despite her absences, she has demonstrated her eligibility. The applicant has given various conflicting versions of her history of absences from the United States.

On the instant Form I-687 application, submitted December 20, 2005, the applicant stated that she was absent from the United States only once during the period of requisite residence, and that the absence both began and ended during June of 1987. She also stated that her last entry into the United States was during June of 1987.

On her previous Form I-687 and on a Form I-485 the applicant stated that she had last entered the United States on December 15, 1987, which contradicts her assertion on the instant Form I-687 that she was not absent from the United States after June 1987.

In her October 26, 2006 sworn statement the applicant confirmed her visit to Mexicali during 1987, and added that she had also been absent for about three weeks in 1988 or 1989. This again contradicts her 2005 statement, on the instant Form I-687, that she was not absent from the United States after June 1987.

The applicant's criminal record indicates that, on September 11, 2000 the applicant attempted to enter the United States and was arrested at or near San Ysidro, California. That criminal record demonstrates that, contrary to her assertion on the instant Form I-687, the applicant was absent from the United States immediately prior to that arrest.

On her March 16, 1991 declaration the applicant stated that she was absent from the United States from May 1986 to August 1986, as well as from December 1987 to August 1988. The absence from May 1986 to August 1986, to which the applicant admitted, would necessarily include more than 45 days within the qualifying period.<sup>2</sup>

At her August 4, 2006 interview, the applicant stated that she left the United States for a few days during 1982, and confirmed her absence from May 1986 to August 1986.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. Further, the applicant must resolve any inconsistencies in the record with competent, independent, objective evidence. Attempts to explain or reconcile such inconsistencies, absent competent objective evidence sufficient to demonstrate where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

On appeal, the applicant has attempted to retract her account of an absence from the United States from December 1987 to August 1988, but has not addressed her admission that she was absent from May 1986 to August 1986.

None of the evidence provided supports the proposition that the applicant was present in the United States from May 1986 to August 1986, when the applicant admitted, on her March 16, 1991 declaration, and confirmed in her signed statement of August 4, 2006, that she was absent. The applicant has not retracted that admission and, in any event, given the applicant's contradictory assertions pertinent to her history of absences, and the language of *Matter of Ho*, 19 I&N Dec. 582, 591-92, this office would be unlikely to find such a retraction credible. This office believes the applicant's admission that she was absent for more than 45 consecutive days during the period of requisite residence.

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.

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<sup>2</sup> The period of requisite residence ended on the date between May 5, 1987 and May 4, 1988 when the applicant first filed or attempted to file a Form I-687. The applicant's alleged absence from December 1987 to August 1988 may, therefore, have included more than 45 days during the period of requisite residence, or it may have begun after the period of requisite residence. This office will not rely on that absence in today's decision.

§ 245a.2(h)(1)(i). The phrase “emergent reasons” has been defined as “coming unexpectedly into being.” *Matter of C*, 19 I&N Dec. 808 (Comm. 1988). The applicant submitted no evidence that her failure to return to the United States earlier was due to an emergent reason.

The applicant is ineligible for temporary resident status under section 245A of the Act pursuant to 8 C.F.R. § 245a.2(h)(1). Her prolonged absence therefore renders her ineligible; pursuant to section 245A(a)(2) of the Act and 8 C.F.R. § 245a.2(h)(1), for temporary resident status under section 245A of the Act. The application was correctly denied on that basis and the basis for denial has not been overcome on appeal. The appeal must therefore be dismissed.

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