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



U.S. Citizenship and Immigration Services

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FILE: [REDACTED] Office: NEW YORK Date: **SEP 24 2008**
MSC-05-228-11057

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 Director, New York. 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 during the requisite period. Specifically, the director found that the applicant had been absent from the United States from March 1987 until July 1987 and that this extended absence constituted a break in the applicant's continuous residence in the United States.

On appeal, the applicant states that her extended absence was due to medical complications associated with her pregnancy and her newborn child. The applicant also explains that she does not possess additional documentation to prove that she resided continuously in the United States during the requisite period. The applicant has submitted a business card with contact information for [REDACTED] a witness who provided an affidavit in support of the applicant's Form I-687 application.

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 May 16, 2005. At part #32 of the application, where applicants were asked to list all absences from the United States, the applicant listed an absence from March 1987 until July 1987. The applicant indicated that she traveled to India during this time and that the purpose of the trip was to "visit relatives."

The applicant's admitted absence from the United States from March 1987 until July 1987, a period of at least 91 days, is in excess of 45 days. Continuous unlawful residence is broken if an absence from the United States is more than 45 days on any one trip unless the return could not be accomplished due to emergent reasons. 8 C.F.R. § 245a.2(h)(1)(i). The term "emergent reason" is not defined by the regulations. However, the Commissioner held in *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988), that an emergent reason is one that comes "unexpectedly into being."

As noted above, the applicant stated on her Form I-687 application that the purpose of her trip to India from March 1987 to July 1987 was to "visit relatives." Similarly, according to the Notice of Intent to Deny issued on February 2, 2006, the applicant testified before an immigration officer that she left the United States in March of 1987 to "visit India" with her husband. However, on appeal, the applicant states that she traveled to India in March of 1987 because she was pregnant and suffering from acute anemia. The applicant states that she went to India so that her relatives could take care of her during her pregnancy. The applicant also states that she was advised to remain in India following the birth of her baby, because she was still anemic and because the baby was underweight.

Although the applicant states that she tried to explain the reasons for her absence during her interview and in response to the Notice of Intent to Deny, there is no evidence of this in the record. Further, the applicant has not provided any evidence of the circumstances surrounding her absence other than her own testimony. The burden is on the applicant to establish that her return could not be accomplished because of emergent reasons. In order to meet this burden, the applicant must provide evidence apart from her own testimony. 8 C.F.R. § 245a.2(d)(6). The applicant has failed to provide such evidence.

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

The applicant submitted the following affidavits in support of her application:

- An affidavit from [REDACTED] dated May 8, 2005. The affiant states that she has known the applicant since approximately September 1981. The affiant states that she went to Florida at that time and met the applicant when the applicant was working at a 7-Eleven store. The affiant does not describe her initial meeting with the applicant in any detail, nor does she provide any details regarding the nature and frequency of her contact with the applicant during the requisite period. Given these deficiencies, the affidavit will be given only minimal weight as evidence of the applicant's residence in the United States during the requisite period.
- An affidavit from [REDACTED] dated May 8, 2005. This affidavit is nearly identical to the affidavit of [REDACTED]. The affiant states that he met the applicant in September 1981 while on a tour in Florida. The affiant does not claim to have knowledge regarding

the applicant's residence in the United States, does not describe his initial meeting with the applicant in any detail, and does not provide any details regarding the nature and frequency of his contact with the applicant during the requisite period. Given these deficiencies, this affidavit will be given only minimal weight as evidence of the applicant's residence in the United States during the requisite period.

- An affidavit from [REDACTED] dated May 9, 2005. The affiant states that he has known the applicant since March of 1988. The affiant states that he and the applicant went to an INS office together in March of 1988 to file their Form I-687 applications for temporary resident status. The affiant does not claim to have any knowledge of the applicant's residence in the United States. Therefore, this affidavit will be given only minimal weight as evidence of the applicant's residence in the United States during the requisite period.
- An affidavit from [REDACTED] dated May 6, 2005. The affiant states that the applicant was his tenant at [REDACTED] Florida from November 1980 to July 1985. Also included in a copy of the lease purportedly executed by the applicant and [REDACTED] Nasim on October 28, 1980. Although the affidavit and lease provide some evidence of the applicant's residence in the United States, these documents fail to address the applicant's extended absence from the United States in 1987.

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 absence 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.