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U.S. Citizenship
and Immigration
Services

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FILE:

MSC 05 251 36945

Office: LOS ANGELES

Date:

FEB 05 2006

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. 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, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

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 failed to overcome the grounds for denial and, therefore, failed to establish 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.

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).

An applicant for temporary resident status under section 245A of the Act has the burden to establish by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, is admissible to the United States...and is otherwise eligible for adjustment of status under this section. 8 C.F.R. § 245a.2(d). When something is to be established by a preponderance of evidence it is sufficient that the proof only establish that it is probably true. *See Matter of E- M-*, 20 I&N Dec. 77 (Comm. 1989).

Although Service regulations provide an illustrative list of contemporaneous documents that an applicant may submit, the list also permits the submission of affidavits and any other relevant documents. 8 C.F.R. § 245a.2(d)(3)(vi)(L).

In the present matter, the record shows that on October 24, 2005, the director issued a notice of intent to deny (NOID). The director restated the requirements for temporary resident status pursuant to 8 C.F.R. § 245a.2(b) and discussed the dates of the applicant's claimed absences from the United States, noting that the applicant's first absence resulted in her returning to the United States without inspection and the second absence, which occurred outside of the statutory time period, resulted in the applicant reentering the United States with a visa. It is noted that the director made no adverse findings with regard to the information he discussed. Rather, the director generally stated that the documents submitted by the applicant were insufficient to meet her burden of proof.

Accordingly, in an effort to interpret the director's general statements, the applicant's counsel provided a response letter discussing the applicant's absence during the statutory time period and asserting that such absence was within the length of time allowed an applicant for temporary resident. Counsel appears to have interpreted the NOID as bearing adverse findings regarding the applicant's absence.

On appeal, counsel once again raises a similar argument with regard to the applicant's absences, asserting that the applicant was not absent for longer than allowed by regulation.

In a comprehensive review of the record, the AAO concludes that neither the applicant's absences nor the evidence submitted in support of her application precludes a favorable finding. Non-contemporaneous documentation, including affidavits submitted by persons who are willing to testify in this matter, may be accorded substantial evidentiary weight. In reviewing the documentation submitted in support of the applicant's claim in the present matter, the AAO finds the affidavits to contain sufficient information that is consistent with information provided by the applicant regarding her residence in the United States during the statutory time period. Additionally, the applicant submitted some contemporaneous evidence, including several pay stubs and immunization records that further support the applicant's claim. As such, contrary to the director's conclusion, the evidence provided is sufficient to meet the applicant's burden of proof of residence in the United States for the requisite period.

The applicant's inability to submit additional contemporaneous documentation of residence is not found unduly implausible, considering all factors. It is concluded that the applicant has been residing unlawfully in the United States since January 1, 1982. There are no known grounds of ineligibility present.

ORDER: The appeal is sustained. The application for temporary resident status is approved.