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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship and Immigration Services

PUBLIC COPY

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FILE: [redacted] Office: LOS ANGELES Date: JUL 24 2009

MSC 06 095 10873

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:

[redacted]

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.

John F. Grissom
Acting 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, 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. 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, and that the evidence submitted by him did not establish his eligibility for the immigration benefit sought. 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. Specifically, the director noted that the applicant was outside the United States for more than 45 consecutive days during the requisite period, which interrupted his claim of continuous residence.

On appeal, counsel submits a brief stating that the applicant was outside the United States for more than 45 consecutive days during the requisite period, but that his absence was necessitated by a family medical emergency amounting to emergent circumstances which prevented his return to the United States. Counsel states that the aforementioned absence should not be considered a break in his continuous residence and that the applicant is eligible for the immigration benefit sought.

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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6).

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 (1) entered the United States before January 1, 1982 and (2) has continuously resided in the United States in an unlawful status for the requisite period of time. As noted above, the director denied the application because the applicant was absent from the United States for more than 45 days during the requisite period. The applicant admits that he departed the United States for his native country on December 13, 1985 and returned on February 11, 1986, an absence of 60 days.

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 failed to establish continuous residence during the requisite period because his 1985 - 1986 absence from the United States 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 "emergent reasons" must be unexpected at the time of departure from the United States and of sufficient magnitude that the applicant's return within the time permitted for continuous residence made returning more than an inconvenience, but practically impossible. The applicant traveled to Peru because of his mother's illness. On appeal, the applicant provided a translated medical statement signed by [redacted], which indicates that the applicant's mother received medical treatment for Diabetes Mellitus from December 4, 1985 until January 28, 1986, requiring insulin and a nutritional diet. The statement does not indicate that the medical condition was of such severity as to require the applicant to remain in his native country and not return to the United States for a period of time exceeding 45 days. The statement is neither attested to nor supported by medical documentation. The applicant provides no other independent, corroborative, contemporaneous evidence to support his statement of events relating to his mother's illness and trip to Peru. The record does not establish that the applicant's decision to remain in Peru beyond the permissible 45 day period was anything but a personal choice on behalf of the applicant, not something caused by circumstances beyond his control.

Further, the remaining evidence of record fails to establish the applicant's residence in the United States for the duration of the requisite period. The applicant submitted the following evidence which is relevant to his application:

- The applicant submitted witness statements from six individuals who state generally that they know the applicant, and that the applicant has resided in the United States for all, or a portion 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 statements provided do not provide detailed evidence establishing how the witnesses knew the applicant, the details of their association or relationship, or detailed accounts of an ongoing association establishing a relationship under which the witnesses 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, witness statements must do more than simply state that a witness knows an applicant and that the applicant has lived in the United States for a specific time period. The statements must contain sufficient

detail, generated by the asserted contact with the applicant, to establish that a relationship does in fact exist, how the relationship was established and sustained, and that the witness does, by virtue of that relationship, have knowledge of the facts asserted. The witness statements submitted by the applicant, therefore, are not deemed probative and are of little evidentiary value.

- The applicant submitted two statements from [redacted] that states that the applicant has been a patient since 1981. The statement is not deemed probative and is of little evidentiary value as it provides no details about the dates and/or places of treatment for the applicant during the requisite period. Nor do the statements provide copies of supporting medical records or otherwise state the source of the information provided.

Two Form I-687s are in the record. One is the present Form I-687 and dated December 27, 2005. The other was executed by the applicant on April 17, 1990.

- The 1990 Form I-687 lists the following absences from the United States for the applicant: September 8, 1986 – September 9, 1986 for a family emergency trip to Peru; December 9, 1985 – December 11, 1985 for a vacation to Costa Rica; and November 11, 1985 – November 28, 1985 for a vacation to Mexico.

- The 2005 Form I-687 lists the following absences from the United States for the applicant: November of 1985 – November of 1985 for a vacation to Mexico; December of 1985 – December of 1985 for a vacation to Costa Rica; and December of 1985 – February of 1986 for a family emergency to Peru.

The inconsistencies noted in the applicant's absences from the United States between the two Forms I-687 have not been explained and are material to the applicant's claim because they have a direct bearing upon the applicant's activities and whereabouts during the requisite period. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The applicant provided the following employment statements in support of his claim.

- A statement from [redacted], which is neither sworn to nor notarized and states that the applicant was employed at [redacted]'s ranch from January of 1981 to November 10, 1985 as a general labor employee;

- A statement from [redacted] Regional Human Resource Manager, Jack In The Box Restaurants, which is neither notarized nor sworn to and states that the applicant was

employed by that organization from April 4, 1986 to April 13, 1986 as a production employee;

- A statement from [redacted], Director of Human Resources, The Anaheim Hilton, which is neither notarized nor sworn to and states that the applicant was employed by that organization as a dishwasher from April 11, 1986 to May 6, 1986;

- A statement from [redacted], Personnel Manager, The Grand Hotel, which is neither notarized nor sworn to and states that the applicant was employed by that organization as a laundry person from May 16, 1986 until June 19, 1986;

- A statement from [redacted], owner of Pinto's Disposal Service, which is neither notarized nor sworn to and states that the applicant was employed by him as a mechanics helper and general laborer from July of 1986 until August of 1987; and

- A statement from [redacted], Branch Manager, World Book-Childcraft International, Inc. which is neither notarized nor sworn to and states that the applicant was employed by that organization from September 20, 1987 to September of 1989.

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment must: provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's duties; declare whether the information was taken from company records; and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable. The employment statements submitted by the applicant fail to provide the information required by the above-cited regulation. The statements do not provide: the applicant's address at the time of employment; show periods of layoff (or state that there were none); declare whether the information provided was taken from company records; or identify the location of such company records and state whether they are accessible or in the alternative why they are unavailable. As such, the employment statements are not deemed probative and are of little evidentiary value.

The applicant provides tax returns and wage information for the years 1987 and 1988. Social Security Administration records indicate that the applicant did not earn money in the United States prior to 1986. The record contains no additional earnings information for the applicant during the requisite period.

The only other evidence submitted by the applicant is a letter with religious content entitled "One Solitary Life." It is unsigned but states "Merry Christmas! The Primary Presidency, 1981." The record does not establish the relevance of this document or state how it is associated with the applicant. It is, therefore, of no evidentiary value.

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.