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**U.S. Department of Homeland Security**
U. S. Citizenship and Immigration Services
*Office of Administrative Appeals* MS 2090
Washington, DC 20529-2090

**U.S. Citizenship and Immigration Services**

[redacted]

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FILE: [redacted] Office: LOS ANGELES Date: JUN 05 2009

MSC-05-235-12329

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. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed or rejected, 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.

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 (together comprising the I-687 Application). The director denied the application, finding that the applicant's absence from April 1985 to August 1985 was for more than 45 days and that it was not due to emergent reasons.

On appeal, counsel for the applicant contends that the applicant could not return within the 45-day limit because he had to attend to his wife's unexpected medical problems caused by her miscarriage, an emergent reason as defined at 8 C.F.R. § 245a.15. On appeal, the applicant through his counsel submits a letter from [redacted] who indicates that [redacted] the applicant's wife, had to be operated due to her miscarriage in June 1985.

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).

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).

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, "[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.

As indicated above, the applicant claims that he could not return timely to the United States in 1985 because he had to stay in Mexico to take care of his ill wife. [redacted] states in his letter that the applicant and his wife sought medical attention from him in May 1985. Further, he indicates that the applicant's wife miscarried and had to be operated in June 1985. [redacted] also notes that after the surgery, the applicant's wife suffered from symptoms of anemia and post-partum depression and was ordered to rest for two months.

The record, however, does not support that the applicant's prolonged absence in 1985 was due to his wife's miscarriage or complications in her pregnancy. According to the Form I-687 filed in 2000, the applicant went to Mexico to visit his parents or family from July 1985 to August 1985. In the application filed in 1989, the applicant indicated that he traveled to Mexico for vacation in July 1985. Further, in a personal declaration dated March 29, 1989, the application stated that he left the United States for 20 days in July 1985. Finally, based on the most currently filed I-687, the applicant claimed that he left the United States from April 1985 to August 1985 to get married. 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 applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the application. *Id.* at 591.

At no time prior to the appeal of the denial of his application under the LIFE Act has the applicant stated or provided evidence that his prolonged absence from the United States in 1985 was due to his wife's medical problems. He did not mention his wife's illness at his interview for benefits under the LIFE Act on May 24, 2004, or at his interview for temporary residence on April 28, 2006. Under the regulations as stated earlier, if an applicant for temporary resident status left the United States for more than 45 days during the requisite period, his or her residence would not be deemed continuous unless his or her inability to return was due to emergent reasons. Here, the letter from [redacted], by itself, does not resolve the inconsistencies in the record as noted above. Nor does it establish an emergent reason for the applicant's inability to return timely within the 45-day time limit in 1985. Thus, the AAO agrees with the director that the applicant is ineligible for the benefit sought since his absence from the United States between April 1985 and August 1985 interrupted his continuous residence.

Beyond the decision of the director, the AAO finds that the applicant has failed to meet his burden of proving by a preponderance of the evidence that he has resided in the United States continuously since before January 1, 1982. The applicant stated at his interview on April 28, 2006 that he has resided in the United States continuously since September 1981. As evidence, the applicant submitted his I-94, Record of Departure/Arrival, indicating that he was admitted to the United States on September 12, 1981 and January 8, 1988. The applicant also provided numerous documents such as a photocopy of his California driver's license issued in 1986, photocopies of envelopes with stamps and 1983 and 1987 postmarks, photocopies of his money market and savings accounts in 1986 and 1987, photocopies of his pay stubs received in 1986 and 1987, photocopies of his individual tax returns along with their W-2s filed from 1986 through 2000. Upon review, the AAO finds that the applicant has submitted credible evidence to show that he entered the United States before January 1, 1982. Further, based on the evidence submitted, the applicant has resided in the United States continuously since 1986. Nevertheless, the evidence submitted does not support the applicant's contention that he has resided continuously and unlawfully in the United States throughout the requisite period.

The photocopies of the envelopes with the 1983 postmarks are probative as evidence of the applicant's presence in the United States in that year only.

To show that he has resided in the United States continuously throughout the requisite period, the applicant submitted seven affidavits and two letters. Both [redacted] and [redacted] state in their affidavits that the applicant has been residing in the United States since 1980. [redacted] indicates in her affidavit that the applicant was her neighbor from October 1981 to July 1985. in his affidavit claims that the applicant has been his customer and good friend since May 1982. Both [redacted] and [redacted] in their letters state that they have known the applicant since 1981. None of the witness statements offers specific detail as to how he or she first met the applicant, how he or she dates their acquaintance with the applicant, or whether he or she has direct personal knowledge of where the applicant resided during the requisite period. To be considered probative and credible, affidavits must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period; their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged. Because the affidavits and the statements lack relevant detail, they lack probative value and have minimal weight as evidence of the applicant's continuous residence in the United States throughout the requisite period.

[redacted] claims in his affidavit that the applicant lived at his home from October 1981 to December 1984. As evidence, the affiant and his wife, [redacted] submit a photocopy of their joint tax return for the year 1981 and highlight [redacted] the applicant's first name, as one of their dependent children living with them. The applicant was 22 years old in 1981 and the record does not establish that he was a dependent in the household. Counsel for the applicant additionally claims in the table of contents for the evidence submitted that [redacted] is the applicant's mother. A review of the record, however, reveals that the applicant's mother is [redacted] not [redacted] Further, other than listing the address where the applicant lived from 1981 to 1984, the affiant does not describe with sufficient detail how he first met the applicant, what the applicant did in the United States, or how he supported himself financially in the United States during the requisite period. Simply listing the address where the applicant lived during the requisite period without providing any detail about the events and circumstances of the applicant's life in the United States during the requisite period does not establish the reliability of the assertions and does not establish his continuous residence in the United States since before January 1, 1982. Similarly, [redacted] contends in her affidavit that the applicant lived with her from January 1985 to October 1985 but offers no detail about the applicant's life in the United States. The affidavits from [redacted] and [redacted] are not probative as evidence of the applicant's continuous residence in the United States throughout the requisite period.

the owner of Flo's Pet Shop, claims to have employed the applicant at her store from May 1984 to November 1986. She further states in her affidavit that official records of employment were not maintained during that time. To be considered probative, the regulations

at 8 C.F.R. § 245a.2(d)(3)(i) provide specific guidelines that an author of an employment letter must follow. Specifically, the author must state the exact period of the applicant's employment with the company, the address or addresses of the applicant during his employment, the applicant's duties with the company, whether or not the information was taken from official company records, where such records are located, and whether United States Citizenship and Immigration Service (USCIS) may have access to the records. Here, the author of the letter fails to state the inclusive dates of the applicant's employment, his duties with the company, and his specific address or addresses during the employment. The author also fails to explain how she dates the applicant's employment with the company from May 1984 to November 1986. The letter from Flo's Pet Shop is not probative as evidence of the applicant's residence in the United States during the requisite period.

The absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, the lack of detail, and the inconsistencies in the record as noted above detract from the credibility of his 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 lack of credible supporting documentation and the inconsistencies in the record, it is concluded that 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.

Additionally, the AAO notes that the applicant's reentry into the United States with a visitor's visa in January 1988 is inconsistent with his intention to resume permanent residence in the United States, on that date. Thus, the applicant is inadmissible to the United States on the grounds of materially misrepresenting a material fact and is therefore, ineligible for the benefit. Section 212(a)(6)(C) of the Act; 8 U.S.C. § 1182(a)(6)(C); 8 C.F.R. § 245a.2(c)(3). Although the applicant's inadmissibility may be waived "for humanitarian purposes, to assure family unity or when it is otherwise in the public interest," pursuant to Section 245A(d)(2)(B)(i) of the Act; 8 U.S.C. § 1255a(d)(2)(B)(i); 8 C.F.R. § 245a.18(c), the applicant has not obtained a waiver of inadmissibility. For this additional reason, the application may not be approved.

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