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U.S. Citizenship
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Services

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FILE: [REDACTED]
MSC-05-090-14992

Office: LOS ANGELES

Date: NOV 07 2008

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. 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 read "Robert P. Wiemann".

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, Los Angeles, and that decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant had not demonstrated that she had continuously resided in the United States in an unlawful status since before January 1, 1982 through May 4, 1988. Specifically, the record of proceeding reveals that the applicant was issued a Filipino passport on February 23, 1986 in Manila. The same passport was stamped with a United States non-immigrant visa on May 1, 1987. The passport also contains an entry stamp from Los Angeles immigration authorities on May 17, 1987. The applicant indicated on her Form I-687 application that she entered the United States in March 1981 and that she remained in the United States until April 15, 1987. Noting the inconsistencies in the record and the facts that the applicant was in the Philippines on February 23, 1986 when her passport was issued and she entered the United States with a non-immigrant visa on May 17, 1987, the director denied the application on August 14, 2006.

In response to the inconsistencies noted by the director in his decision, on appeal, the applicant states, "I arrived in the United States in March 1981 and left in April 15, 1987 to my father's funeral. On May 1, 1987 I obtained my visa and I returned to the United States the same day. The next day I went back to the Philippines and returned on May 17, 1987. Regarding my passport I have a relative who helped me obtain my passport in 1986 with the Department of Foreign Affairs in the Philippines." The applicant does not submit any additional information or evidence on appeal.

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.

As stated above, the issue on appeal is whether the applicant resided continuously in the United States for the duration of the requisite period. Noting that the applicant's passport and CIS records both indicate that she was issued a passport in 1986 in Manila and that she entered the United States using a non-immigrant visa on May 17, 1987, the director correctly noted that the applicant has failed to meet her burden of proof. The applicant did not submit evidence in support of her claim that a friend obtained her passport in Manila in 1986. The applicant did not submit evidence explaining why her testimony with respect to the number and length of her departures to the United States was internally inconsistent.

As the director noted, 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 remaining evidence offered in support of the application. The applicant's explanation regarding the inconsistencies noted in the record of proceedings is not supported by the documents in the record. Furthermore, she has not submitted any competent objective evidence which points to where the truth lies.

There is no other evidence of record establishing that the applicant entered the United States prior to January 1, 1982 and resided continuously in the United States throughout the requisite period.

A review of the decision reveals the director accurately set forth a legitimate basis for denial of the application. On appeal, the applicant has not presented additional evidence. Nor has she provided a credible explanation for the inconsistency noted by the director. The appeal must therefore be dismissed.

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