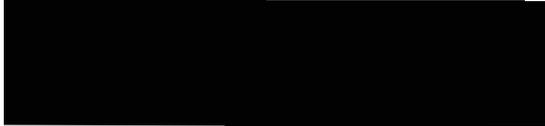


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**U.S. Citizenship
and Immigration
Services**

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FILE: [REDACTED]
MSC-04-280-10022

Office: NEW YORK

Date: **SEP 04 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:



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 District 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. The director determined that the applicant had not established 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. The director noted in the Notice of Intent to Deny (NOID) that the applicant had been absent from the United States from 1983 to 1994, which was in excess of the forty-five days and in excess of the one-hundred-eighty(180) days aggregate amount allowed. The director denied the application, finding that the applicant had failed to show that she had resided in the United States for the requisite periods, and that she was therefore inadmissible to the United States under the provision of Section 245a of the Act.

On appeal, counsel admits that the applicant was absent from the United States from 1983 to May of 1994, but asserts that the applicant's absence from the United States did not interrupt her continuous residence because she had to leave the country in order to care for her ill child. Counsel also asserts that the applicant did not interrupt her physical present in the United States during the requisite period, in that the applicant's time in Cameroon to care for her ill daughter triggered the brief, casual, and innocent exception under 8 U.S.C. § 1255(a)(3).

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) 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. See 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).

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 applicant shall be regarded as having resided continuously in the United States if at the time of filing an application for temporary resident status,¹ 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 is considered filed, 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 residence in the United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.2(h)(1).

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

¹ Under the CSS/LULAC Settlement Agreements, this refers to the time the applicant attempted to file or was caused not to timely file the application.

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."

At issue in this proceeding is whether the applicant has submitted sufficient evidence to establish that her failure to timely return to the United States within 45 days was due to emergent reasons.

In an affidavit dated August 29, 2005, the applicant stated under oath that she left Cameroon in September of 1981 and vowed never to go back. She also stated that she returned to Cameroon to take care of her only daughter who was very ill, and that if she had not gone to Cameroon her daughter would have died. She stated that she took care of her daughter relentlessly to save her life.

During her interview with Citizenship and Immigration Services (CIS) on July 6, 2005, the applicant stated under penalty of perjury that she first entered the United States in September of 1981 and that she resided at Park Place in New York until 1983 when she traveled to Cameroon because her daughter was ill. The applicant further stated that she returned to the United States in 1994.

On appeal, counsel asserts that the applicant didn't expect to have to travel to Cameroon to care for her daughter and that in that respect she has satisfied the emergent reasons requirement. Counsel also asserts that the applicant's stay in Cameroon to care for her ill child was brief, causal and innocent, in that it was not an act that she planned, and that she had no intentions of interrupting her physical presence in the United States. Counsel claims the applicant's eligibility for temporary resident status and submits a letter with English translations, dated January 10, 1983 from [REDACTED] of the Republic of Cameroon. The doctor, [REDACTED] Ministry of Public Health, Provincial Delegation of Public Health of Center and South, Unit of Psychiatry, requested that the applicant return to Cameroon in order to help with the treatment of her daughter [REDACTED] who suffers from behavioral disorder. He also states that the applicant's daughter has been his patient since her birth, and that the applicant's presence would be psychologically beneficial to her daughter.

Here, although the applicant submitted a statement from her daughter's doctor requesting that she return to Cameroon, she has failed to submit any records that the doctor would have consulted or other official records such as appointment notices or follow-up recommendations from the daughter's doctor. No records have been provided to demonstrate the nature or severity of the daughter's mental illness or the extent to which the applicant was instructed to care for her daughter. The record does not contain copies of hospital bills, medical prescriptions, treatment plans, or hospital release statements to support the applicant's claimed absence. Although the applicant claims that her daughter's illness was life threatening, she has not provided any official medical documentation to substantiate such claim. There has been no evidence submitted from the daughter's attending physician to demonstrate the amount of time the applicant's daughter was under his or her care or the affiliation the doctor had with the applicant.

In the instant case, the applicant's claim of an emergent reason for her absence from the United States for over 10 years has not been substantiated. The applicant's continuous unlawful residence is broken if an absence from the United States is for more than 45 days on any one trip unless she can demonstrate that her timely return could not be accomplished due to emergent reasons. 8 C.F.R. 245a.2(h)(1)(i). Here, the applicant does not claim that her extended absence from the United States was unexpected, but rather that her trip to Cameroon was unexpected. Dr. [REDACTED] stated in his letter that the applicant's daughter had been his patient since her birth therefore the applicant was or should have been aware of her daughter's medical condition before leaving the United States. The applicant has failed to establish that due to emergent reasons her return to the United States could not be accomplished within the time period allowed, or that she was maintaining residence in the United States during her absence for more than 10 years. It is not the unexpected departure but, the unexpected delay in returning to the United States which triggers the emergent reason exception. Although counsel claims that the applicant's absence from the United States was brief, causal and innocent, and that she never intended to interrupt her physical presence in this country, there has been no evidence submitted to support such claim. There has been no evidence presented to show that the applicant was physically present in the United States on November 6, 1986, or that she otherwise meets the continuous residence requirement.

In light of the applicant's admission that she was absent from the United States from 1983 to May 1994, and her failure to provide sufficient evidence to demonstrate that her return was delayed due to emergent reasons, any continuous unlawful residence she may have had in the United States during the requisite period has been broken. Due to her absence, the applicant has failed to demonstrate continuous unlawful residence and continuous physical presence in the United States for the requisite periods. The applicant is therefore ineligible for temporary resident status under section 245A of the Act on that basis.

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