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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
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Services

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[REDACTED]

FILE: [REDACTED]
MSC 06 096 11112

Office: LOS ANGELES

Date: MAR 05 2010

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.


Perry Rhew
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 she had continuously resided in the United States in an unlawful status for the duration of the requisite period, and that the evidence submitted by her did not establish her eligibility for the immigration benefit sought. The director denied the application, finding that the applicant had not met her 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 found that the applicant was absent from the United States from January of 1982 until September of 1982 and that she did not, therefore, qualify for the immigration benefit sought.

On appeal, the applicant submits a brief and additional information. The applicant states that she was outside the United States during the requisite period from January of 1982 until September of 1982. The applicant states that it was not her intention to remain outside the country for that length of time, but that she was prevented from returning because of a serious health condition amounting to emergent reasons for her extended absence.

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. The record contains sufficient evidence including contemporaneous documents, letters and affidavits establishing that the applicant continuously resided in the United States from September 1, 1982 through May 4, 1988. The record does not establish, however, that the applicant continuously resided in the United States from before January 1, 1982 until September 1, 1982, a portion of the requisite period.

The applicant states that she left the United States in February of 1982, and that she returned on September 1, 1982, being admitted with a United States visa. The record confirms the applicant's September 1, 1982 entry date. The applicant states that she left the country to visit her ailing grandmother and intended to return in a short period of time. The applicant states that while she was in her native country, she suffered a severe relapse of a medical condition, scleroderma, which resulted in renal failure. The applicant contends that her medical condition was critical, requiring extended bed rest which prevented her from traveling. The applicant submitted, in support of her assertions, medical

statements from [REDACTED] and [REDACTED], who state that she was under their care from February of 1982 until August of 1982 for bronchial pneumonia, which complicated her diagnosed condition of scleroderma, which provoked renal insufficiency and required prolonged bed rest. These medical statements are not supported by copies of medical records and they are, accordingly, of little probative value.

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 her absence from the country from January of 1982 until September of 1982 exceeded, by her 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. As previously noted, the applicant submitted medical statements from [REDACTED] and [REDACTED] who state that she was under their care from February of 1982 until August of 1982 for bronchial pneumonia, which complicated her diagnosed condition of scleroderma, which provoked renal insufficiency and required prolonged bed rest. These medical statements are not supported by copies of medical records and they are, accordingly, of little probative value. The evidence of record establishes that the applicant had knowledge of her medical condition prior to her departure from the country. As stated in a letter dated March 8, 1988 by [REDACTED] who had treated the applicant for scleroderma since 1983, scleroderma is an illness that is not expected to remit but is usually progressive. The disease is associated with severe complications which may develop including cardiac arrhythmias, severe lung disease, rapidly progressive hypertension and renal failure, as well as a variety of abnormalities in intestinal function. The relapse of the applicant's medical condition while in Chile in 1982 cannot be said to have been unexpected as she had knowledge of her affliction with the disease. The relapse was not unexpected, but is characteristic

of the disease and its complications. The applicant's absence from the country during 1982 must be considered to have broken her continuous unlawful residence in the United States during the requisite period.

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that she 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.