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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

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[REDACTED]

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FILE:

[REDACTED]

Office: IRVING

Date: SEP 27 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. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, 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.


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, Irving, Texas. 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 noted that the applicant had been absent from the United States for over 45 days and had failed to establish that her return had been delayed due to an emergent reason. The director, therefore, concluded that the applicant had not resided continuously in the United States for the requisite period and was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, the applicant asserts that her absence was prolonged due to an emergent reason, and that it did not interrupt her continuous residence.

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)(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 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.

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 documents submitted in support of the applicant's eligibility include:

- A copy of the applicant's checking account information from Compass Bank indicating that the account was opened July 23, 1986.

- Copy of the applicant's I-94 card, along with a B-2 nonimmigrant visitor visa, valid until January 15, 1987;
- A copy of a check made out to Time Insurance Company dated March 15, 1987;
- A copy of the applicant's legalization fee receipt dated November 25, 1987;
- Copies of credit card slips dated 1987;
- A medical document from Mesquite Community Hospital in Mesquite, Texas dated January 17, 1987 for services rendered [REDACTED];
- Affidavits from [REDACTED] Although the affiants indicate that they met the applicant in the United States during the relevant period, their statements are not notarized and the affiants offer no indication that they have direct, personal knowledge of the applicant's continuous residence in the United States. They do not indicate where or under what circumstances they met the applicant, the addresses at which the applicant lived during the requisite period, their frequency of contact with her during this period, or any other details of the events and circumstances of the applicant's residence.

The applicant also submitted additional documentation dated in 1986 and 1987 however, the documents do not contain the applicant's name and therefore, will not be afforded probative weight.

The applicant has also submitted contradictory information regarding her addresses in the United States and has not provided an explanation or evidence which resolves the inconsistencies. Specifically, the director indicated on her Form I-687 dated October 11, 1990 the following residences during the relevant period:

Dallas, Texas from 1980 until 1982
Fort Lauderdale, Florida from 1982 until 1986
Dallas, Texas from 1986 until 1990

However, the applicant filed a Form I-687 application on November 25, 1987 at the Miami legalization office using the alien registration number, [REDACTED]. A review of this record reflects that the applicant did not claim any residence in the United States prior to 1985. She also fails to list any addresses in the United States on her current Form I-687. On her Form I-687 filed in 1987 she claimed the following residences:

Fayetteville, Arkansas from July 1985 until December 1986
Winter Peak, Florida from January 1987 until March 1987
Miami, Florida from March 1987 until November 1988.

In a Notice of Intent to Deny (NOID) issued to the applicant on July 27, 2009, the director noted the above inconsistencies. On appeal, in response, the applicant indicates that she traveled throughout the United States with her husband and frequently stayed in temporary housing. She indicates that she does not know why United States Citizenship and Immigration Services (USCIS) would reflect those as permanent addresses.

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.

The director also noted that the applicant interrupted any continuous residence that she may have established by departing the United States for more than 180 days. The applicant lists multiple conflicting dates of absences during the relevant period on all three of her filed Form I-687 applications.

At her April 13, 2009 interview with USCIS, the applicant indicated that she gave birth to a daughter [REDACTED], on [REDACTED] in Israel and did not reenter the United States until July 15, 1986. The director noted that the applicant was out of the United States for at least 240 days, in excess of the 180 day requirement. Thus, the director concluded that the applicant was not eligible for temporary resident status on this basis as well.

On appeal, the applicant attests that she was unable to return earlier as planned because she suffered from post-partum depression following the birth of her child. She did not provide any evidence of her condition beyond her own statements. As noted above, to meet his burden of proof, the applicant must provide evidence of eligibility apart from her own testimony, and in this case she has failed to do so.

Continuous unlawful residence is broken if an absence from the United States is more than 45 days on any one trip unless return could not be accomplished due to emergent reasons. 8 C.F.R. § 245a.2(h)(1)(i). "Emergent reasons" has been defined as "coming unexpectedly into being." *Matter of C*, 19 I&N Dec. 808 (Comm. 1988).

The applicant's admitted absence from the United States from November 1985 to July 1986, a period of more than 45 days, is clearly a break in any period of continuous residence she may have established. As she has not provided any evidence other than her own attestation that it was her sudden condition that was the "emergent reason" for her failure to return to the United States in a timely manner, she 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.