



U.S. Citizenship  
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FILE:   
MSC-05-152-10172

Office: New York District Office

Date: AUG 13 2007

IN RE: Applicant: 

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. 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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application for temporary resident status was denied by the District Director of the New York District Office and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director noted that the applicant had been absent from the United States for over 45 days, and had failed to establish that an emergent reason had delayed his return. The director therefore concluded that the applicant had not resided continuously in the United States, and denied the application.

On appeal, the applicant stated that he has resided in the United States since October 1981 and that he had provided documentation in support of the credibility of his application.

Aliens who are eligible for adjustment to temporary resident status are those who establish that he or she entered the United States prior to January 1, 1982, and who have thereafter resided continuously in the United States in an unlawful status, and who have been physically present in the United States from November 6, 1986, until the date of filing the application. Section 245A(a)(2) and 254A(a)(3) of the Act, 8 U.S.C. § 1255a(a)(2), 8 U.S.C. § 1255a(a)(3) and 8 C.F.R. § 245a.2(b)(1).

For purposes of establishing residence and presence in accordance with the regulation at 8 C.F.R. § 245a.2(b), "until the date of filing" shall mean until the date the alien 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, consistent with the class member definitions set forth in the CSS/Newman Settlement Agreements. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

An alien shall be regarded as having resided continuously in the United States if at the time of filing an application for temporary resident status, 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 filed, unless the alien can establish that due to emergent reasons the return to the United States could not be accomplished within the time period allowed, the alien was maintaining residence in the United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.1(c).

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."

An alien applying for adjustment of status has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, 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).

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.* 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 (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.

Though the applicant's appeal states that he began residing in the United States since October 1981, on his Application for Status as a Temporary Resident (Form I-687) the applicant claimed that he first established a residence in the United States in December 1981 when he was three years old, and that he continuously resided in the United States after this entry. In section #32 of Form I-687, where absences from the United States were to be listed, he listed two absences. The dates of the absences he listed were from April 2003 to July 2003 and from December 1986 to April 1987. However, both the notes of the legalization officer who later interviewed the applicant and a sworn statement, signed by the applicant on February 22, 2006, state that the applicant left the United States from 1987 to 2003. There is no indication that the applicant's return was delayed due to an emergent reason. Rather, the interviewing officer's notes indicate that the applicant stated left to attend school.

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 during the relevant period. The regulation also permits the submission of affidavits and any other relevant documents. 8 C.F.R. § 245a.2(d)(3)(vi)(L)

The applicant submitted two (2) notarized affidavits signed by individuals in support of his claim of continuous residence in the United States.

The first affidavit submitted by the applicant is signed by [REDACTED] and states that she has known the applicant since 1982. In this affidavit the affiant does not state how she knows the applicant, nor does it list an address for the applicant.

The second affidavit submitted by the applicant in support of his claim on continuous residence is signed by [REDACTED]. In this affidavit, [REDACTED] states that he has known the applicant since 1986.

However, the affiant does not state how he knows the applicant, nor does he provide an address in the United States where he can verify that the applicant lived.

Neither affidavit contains identity documents establishing the identities of the affiants, nor do they include documentation establishing that the affiants were residing in the United States during the time that either claims to have known the applicant.

In the director's notice of intent to deny, she stated that the affidavits the applicant submitted did not adequately prove that the applicant met his burden of establishing continuous residency and continuous physical presence in the United States. She stated that the content of the affidavits when combined with the testimony of the applicant did not establish that the applicant had credible relationships with those who had submitted affidavits on his behalf. The director further stated that sworn statement signed by the applicant stating that he "left the United States from 1987 to 2003" established that the applicant had neither established that he had maintained continuous residence nor had he established that he had maintained continuous physical presence in the United States.

On appeal, the applicant stated that he has resided in the United States since October, 1981 and that he had previously provided documentation in support of the credibility of his application.

The applicant submitted no additional evidence to establish that he was indeed in the United States for the years 1987 to 2003. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998), citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

In the absence of any other information, it is concluded that the applicant was absent for approximately sixteen (16) years, as he evidently stated to the interviewing officer. As 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."

The interviewing officer's notes state that the applicant explained that he left the United States in order to attend school. The applicant could have reasonably anticipated that an absence for such a purpose would have likely been an extended one. In the absence of clear evidence that the applicant intended to return within 45 days, it cannot be concluded that an emergent reason "which came suddenly into being" delayed the applicant's return to the United States beyond the 45-day period. Therefore, it cannot be concluded that he resided continuously in the United States for the requisite period.

An alien applying for adjustment of status has the burden of proving by a preponderance of evidence that he or she has *continuously* resided in an unlawful status in the United States from prior to January 1, 1982 through the date of filing, is admissible to the United States under the provisions of section 245A of the Act, 8 U.S.C. § 1255a, and is otherwise eligible for adjustment of status. 8 C.F.R. § 245a.2(d)(5). Due to the sixteen (16) year absence, the applicant did not continuously reside in the United States for the requisite period.



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