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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:

MSC-06-101-17353

Office: NEWARK

Date:

AUG 29 2008

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 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, Newark. 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 denied the application because the applicant had failed to prove by a preponderance of the evidence that he had continuously resided in the United States during the requisite period. Specifically, the director noted that the affidavits submitted by the applicant were generic and did not establish the nature of the applicant's relationship with the respective affiants. The director also noted that other evidence submitted by the applicant, including a copy of his New Jersey driver's license and a copy of the biographic information page from his passport, failed to establish that the applicant resided in the United States continuously throughout the requisite period.

The applicant states on appeal that he is eligible for temporary resident status, but that it is impossible for him to provide additional evidence of his entry into and continuous residence in the United States. The applicant also notes in his written statement that he was absent from the United States from June 15, 1986 until September 1986.

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).

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 record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on September 19, 2005. At part #32 of the application, where applicants were asked to list all absences from the United States, the applicant listed an absence from June 15, 1986 until September 26, 1986—a period of 102 days. The applicant also submitted a notarized written statement in support of his application in which he stated that he departed the United States and traveled to the Philippines on June 15, 1986 to get married, and returned to the United States in September of 1986. As noted above, the applicant submitted a written statement in support of this appeal in which he again stated that he was absent from the United States from June 15, 1986 until September 1986.

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 for a period of 102 days in 1986 is a clear break in any period of continuous residence he may have established. As he has not provided any evidence that his return to the United States could not be accomplished due to “emergent reasons,” he has failed to establish by a preponderance of the evidence that he has continuously resided in an unlawful status in the United States for the requisite period.

Even aside from the issue of his admitted absence during the requisite period, the applicant has failed to provide sufficient documentation to establish by a preponderance of the evidence that he resided continuously in the United States throughout the requisite period. The applicant submitted a written statement in support of his I-687 application in which he stated that he “first entered the United States on January 1, 1982 through the port of Long Beach, California.” However, in order to qualify for temporary resident status, the applicant must establish, among other things, entry into the United States *before* January 1, 1982. Thus, by his own testimony it does not appear that the applicant is eligible for temporary resident status.

The applicant submitted the following affidavits in support of his application:

- An affidavit from [REDACTED] dated December 3, 2005. The affiant claims to have knowledge that the applicant resided at [REDACTED] from May 2002 until the signing of the affidavit. Although this coincides with the address provided by the applicant on his Form I-687 application, it is not probative of the applicant’s residence in the United States during the requisite period.
- An affidavit from [REDACTED] dated December 3, 2005. The affiant claims to have knowledge that the applicant resided at [REDACTED] in Bergenfield, New Jersey from December 27, 1999. Although this coincides with the address provided by the applicant on his Form I-687 application, it is not probative of the applicant’s residence in the United States during the requisite period.
- An affidavit from [REDACTED] dated December 3, 2005. The affiant states that the applicant was his roommate at [REDACTED] Jersey from September 26, 1986 until October of 1999. Although the dates and place of residence are consistent with information provided by the applicant on his I-687 application, the affidavit lacks details such as the circumstances under which the affiant came to know the applicant or how he dates his initial acquaintance with the applicant. Lacking such relevant detail, the affidavit can be afforded only minimal weight as evidence of the applicant’s residence in the United States during the requisite period.

- An affidavit from [REDACTED] dated December 2, 2005. The affiant claims to have knowledge that the applicant resided at [REDACTED], New Jersey from January 1, 1982 until June 15, 1986. This coincides with the address provided by the applicant on his Form I-687 application. However, it appears to be inconsistent with the applicant's written statement in which he claimed that he entered the United States on January 1, 1982 and stayed with a friend in Long Beach, California before flying to New Jersey. Also, the affidavit lacks probative details such as how the affiant dates his initial acquaintance with the applicant. Given these deficiencies, this affidavit will be given only minimal weight as evidence of the applicant's residence in the United States during the requisite period.
- Affidavits of [REDACTED], both dated December 3, 2005. [REDACTED] claims to have knowledge of the applicant's residences from September 1986 until the date that the affidavit was signed. [REDACTED] claims to have knowledge of the applicant's residence from January 1, 1982 until June 15, 1986. Both affiants state that they attend the same church as the applicant. Although the dates and places of residence on these affidavits are consistent with information provided by the applicant on his I-687 application, the affidavits lack details such as the circumstances under which the affiants came to know the applicant, how they date their initial acquaintance with the applicant or the nature and frequency of their contact with the applicant. Lacking such relevant detail, the affidavit can be afforded only minimal weight as evidence of the applicant's residence in the United States during the requisite period.

In addition, the applicant submitted a number of documents that fall outside the requisite period. These include copies of a federal tax return from 2002, Form W-2 Wage and Tax Statement from 2001, and an earning report from the Social Security Administration showing earnings in 2000 and 2001. As these documents fall outside the requisite period, they have no probative value as evidence of the applicant's residence in the United States during the requisite period.

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of his claim. Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the applicant's admitted absence from the United States and his reliance upon documents with minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States for the requisite period 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.