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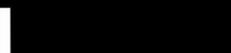
U.S. Citizenship
and Immigration
Services

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FILE:



Office: NEW YORK

Date: **DEC 02 2008**

MSC 05-166-13028

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. 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.

John F. Grissom, Acting 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, New York, and is now before the Administrative Appeals Office 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 denied the application after determining 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 that the affidavits submitted on behalf of the applicant failed to meet the eligibility requirements for affidavits and therefore, were not credible. The director also noted that although the applicant provided a list of her claimed residence and dates of residence as evidence, she was unable to remember that information during her immigration interview. The director therefore concluded that the applicant had not resided continuously in the United States and was, therefore, not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, the applicant asserts that she has submitted sufficient evidence to establish her continuous unlawful residence in the United States since 1981. She provides additional affidavits on appeal.

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 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).

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.15(c)(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 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."

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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet her burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The record shows that the applicant submitted a Form I-687 Application and Supplement to United States Citizenship and Immigration Services (USCIS) on March 15, 2005.

In an attempt to establish continuous unlawful residence in the United States since prior to January 1, 1982, the applicant provided the following affidavit:

- An affidavit from [REDACTED] dated December 19, 2005 in which she stated that she first met the applicant in December of 1981 while she was living at [REDACTED] in New York. Here, the affiant fails to specify the frequency with which she saw and communicated with the applicant during the requisite period. The affiant has also failed to demonstrate that her statement concerning the applicant's residence in the United States was based upon first-hand knowledge of the applicant's whereabouts or circumstances of her welfare during the requisite period. Because the affidavit is lacking in detail as to the applicant's whereabouts and circumstances of her residence, it can be afforded only minimal weight in establishing the applicant's presence in the United States during the requisite period.

In denying the application the director noted that the affidavit submitted did not meet the statutory criteria for affidavits and that the applicant had failed to explain the inconsistencies in the record with regard to her places of residence. The director also noted that the applicant had failed to establish by a preponderance of evidence her eligibility for the immigration benefit sought.

On appeal, the applicant reasserts her claim of eligibility for temporary resident status and submits the following affidavits:

- An affidavit from [REDACTED] dated February 22, 2006 in which she reiterates the statements she made in her December 19, 2005 affidavit. Because the affidavit is lacking in detail, it can be afforded only minimal weight in establishing the applicant's eligibility for the immigration benefit sought.
- An affidavit from [REDACTED] in which he stated that he first met the applicant in December of 1981. Here, the affiant fails to specify the circumstances under which he met the applicant. The affiant also fails to specify the frequency with which he saw and communicated with the applicant during the requisite period. He fails to indicate the applicant's place of residence during the requisite period. Therefore, his statement can be afforded little weight in establishing the applicant's eligibility for the immigration benefit sought.

In the instant case, the applicant has failed to submit sufficient evidence or argument to overcome the director's denial. The attestations, while providing some evidence of the applicant's presence in the United States, are insufficient to establish her continuous unlawful

residence in the country throughout the requisite period.¹ The applicant fails to address the inconsistencies found in the record regarding her places of residence from 1981 to 1988.

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 this 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 inconsistent statements regarding her places of residence, and her reliance upon affidavits with little probative value, it is concluded that she 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.

¹ It is noted by the AAO that although the applicant claims to have arrived in the United States as an eleven year old child, she has failed to identify any parent or guardian who was responsible for her welfare in the United States throughout the requisite period. She has provided neither school records nor immunization or medical records to substantiate her claimed presence in the United States since before January 1, 1982.