

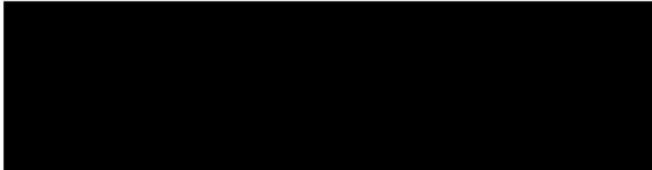
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U.S. Citizenship
and Immigration
Services

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FILE:



Office: TAMPA

Date: JUL 09 2008

MSC-06-098-20057

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, Tampa. 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 on October 20, 2006. The director found that the applicant had failed to prove by a preponderance of the evidence that he had continuously resided in the United States for the requisite period. The director, therefore, found that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

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 January 6, 2006. At part #30 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the first period of residence the applicant listed began in December 1981. The applicant also testified under oath before an immigration officer that he first entered the United States on December 27, 1981. The applicant submitted a copy of his passport page which contains a B-2 visa issued on September 3, 1981 and an admission stamp showing that the applicant was admitted to the United States on December 27, 1981.

As noted by the director, and as stated above, an applicant for temporary resident status must establish entry into the United States prior to January 1, 1982 and residence in the United States in unlawful status from the date of entry until the date of filing or attempted filing. Here, the applicant has testified that he entered the United States on a B-2 visa on December 27, 1981 and that he began “performing odd jobs from the period beginning four months following my entry in the U.S.” Thus, by his own testimony the applicant was not in unlawful status on January 1, 1982, and is therefore not eligible to adjust to temporary resident status.

The applicant submitted the following as evidence of his residence in the United States during the requisite period:

- Affidavit of [REDACTED] signed and notarized on September 25, 2006. The affiant states that the applicant and his wife were his tenants at two different addresses in Miami, Florida from June 1985 until March 1991. No documents are submitted in support of this affidavit such as a lease agreement or receipts for the payment of rent. The affiant does not claim any relationship with the applicant other than that of a landlord-tenant relationship and offers no details that would establish that the applicant lived at these addresses during the requisite period. This affidavit therefore has minimal weight as evidence of the applicant's residence in the United States during the requisite period.
- Affidavit of [REDACTED] signed and notarized on November 17, 2006. The affiant states that the applicant and his wife lived in the affiant's apartment in New York from March 1983 until June 1985. No documents are submitted in support of this affidavit such as a lease agreement or receipts for the payment of rent. The affiant does not claim any relationship with the applicant other than that of a landlord-tenant relationship and offers no details that would establish that the applicant lived at these addresses during the requisite period. The affiant also states that the applicant worked for him as a handyman during the requisite period. However, the affidavit does not comply with the regulatory requirements relating to past employment records. 8 C.F.R. § 245a.2(d)(3)(i). This affidavit therefore has minimal weight as evidence of the applicant's residence in the United States during the requisite period.

In addition, the record contains a letter of employment from [REDACTED] which states that the applicant was employed as a farm worker from November 1, 1985 until May 1, 1986. This letter was previously submitted by the applicant in support of his I-485 application to adjust status pursuant to the Legal Immigration Family Equity (LIFE) Act. The letter fails to comply with the regulation relating to past employment records in that it fails to provide the applicant's address at the time of employment; identify the exact period of employment; declare whether the information was taken from company records; and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable. 8 C.F.R. § 245a.2(d)(3)(i). This letter therefore has minimal weight as evidence of the applicant's residence in the United States during the requisite period.

The applicant also submitted documents that fall outside the requisite period and therefore are not probative of his continuous unlawful residence in the United States during the requisite period. These include the affidavit of [REDACTED] which states that the applicant lived with the affiant's mother from 1993 until 1996 and the letter from the manager of Manadvent Auto Care, Inc. which states that the applicant joined the staff on July 1, 2006.

In addition, the applicant has admitted to absences from the United States of more than 45 days during the requisite period. At part #32 of the Form I-687 application where applicants were

asked to list all absences from the United States since January 1, 1982, the applicant listed an absence from May 1983 until September 1983. The applicant also testified under oath that he was absent from the United States from May 1983 until September 1983.

On appeal, the applicant states that he was only absent from May 1983 until June 1983. He does not provide a convincing explanation for having listed the absence differently on his application, but simply states "I assume that it was two entries made and I recorded them as one entry." The applicant also claims that he did not have an opportunity to make a correction during his interview. However, the record contains "Record of Sworn Statement" which was signed by the applicant at his interview and which states that he traveled outside the United States from May 1983 until September 1983. The fact that he listed this absence both in his written application and in his interview detracts from the credibility of his claim—made for the first time on appeal—that he was only absent from May until June 1983.

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). The applicant's absence from May 1983 until September 1983 is a period of more than 45 days and the applicant has not provided any evidence that his return to the United States could not be accomplished due to "emergent reasons." This absence is therefore a break in any period of continuous residence the applicant has established.

In this case, the absence of credible and probative 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 lack of credible supporting documentation and the inconsistent statements made by the applicant regarding his absence, it is concluded that 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 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.