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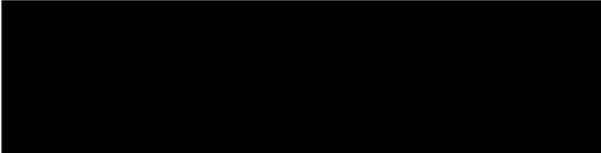
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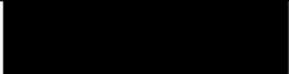
U.S. Citizenship
and Immigration
Services

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FILE:



Office: MIAMI (TAMPA)

Date:

JUL 23 2008

MSC 05 244 15570

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.

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, Miami, Florida. 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, on June 1, 2005. The applicant was interviewed on November 14, 2006 in connection with his Form I-687. The director denied the application on December 4, 2006 finding that the applicant failed to establish that he had entered the United States prior to January 1, 1982 and resided continuously in unlawful status throughout the requisite period. On appeal, the applicant submits a brief statement.

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 applicant attempted to file the application. 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 or attempting to file the application. 8 C.F.R. § 245a.2(b)(1).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and physical presence, in accordance with the regulation at 8 C.F.R. § 245a.2(b)(1), "until the date of filing" shall mean 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 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).

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.* 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. *See* 8 C.F.R. § 245a.2(d)(6).

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 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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to establish his entry into the United States prior to January 1, 1982 and continuous unlawful residence since such date through the date he attempted to file the application.

On the Form I-687, the applicant indicated he had last entered the United States on April 28, 2004. The applicant listed his address for the pertinent time period as: [REDACTED], Pompano Beach, Florida from March 1983 to February 1989. The applicant did not list an address for prior to January 1, 1982 up to March 1983. The applicant listed his absence from the United States during the pertinent time period as: April 1987 to August 1987. The applicant indicated that he was self-employed but provided no other information regarding his work, including the nature of the work or the work locations. The applicant's date of birth is listed on the Form I-687 as January 23, 1960.

The applicant also provided an affidavit dated November 12, 2006 signed by [REDACTED]. Mr. [REDACTED] states that the applicant has been in the United States since October 1981 and indicates that he knew this to be so because he had been in contact with the applicant since 1991. Mr. [REDACTED] states that he met the applicant through a mutual friend and that for the past three years the applicant has been working with his son.

In an interview with a Citizenship and Immigration Services (CIS) officer on November 14, 2006, the applicant confirmed that he had left the United States in April 1987 to go to Brazil to visit and had returned to the United States in August 1987.

On appeal, the applicant asserts that affidavits from third parties may be used to corroborate an applicant's testimony of continuous residence. The applicant also contends that his statement that he left the United States in April 1987 and remained outside the United States for more than 45 days should not be taken into account due to the passage of time. The applicant also claims that he entered the United States prior to January 1, 1982 and that his claim should be given precedence over the information on the Form I-687 listing his residences in the United States that start with a residence in March 1983.

The AAO has reviewed the record in this matter and finds that the applicant has not established his continuous residence in the United States for the applicable time period. The affidavit in the record, signed by [REDACTED] indicates the affiant had been in the United States since October 1981 but also indicates that the affiant has only been in contact with the applicant since 1991. The AAO declines to speculate on whether this is a typographical error or is the true statement of the affiant. The AAO finds the affidavit does not provide sufficient information regarding how the affiant met the applicant and does not provide sufficient information of events and circumstances of subsequent interactions between the affiant and the applicant. This affidavit is not probative.

In addition, the applicant's information on the Form I-687 regarding his residences in the United States beginning in March 1983 and the lack of any information regarding the applicant's employment in the United States during the requisite period seriously detracts from the credibility of his claim of entry into the United States prior to January 1, 1982 and continuous unlawful residence for the requisite time period. The record does not contain sufficient consistent information to corroborate the applicant's claim of continuous unlawful residence for the applicable time period.

Further, the applicant's testimony that he left the United States for Brazil for a four-month period cannot be discounted due to the passage of time. The applicant must establish his continuous unlawful residence for the entire requisite time period. According to 8 C.F.R. § 245a.2(h)(1), an applicant for temporary resident status shall be regarded as having resided continuously in the United States if, at the time of filing of the application, no single absence from the United States has exceeded 45 days, and the aggregate of all absences has not exceeded 180 days between January 1, 1982 through the date the application for temporary resident status is filed, unless the applicant can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed. The applicant's acknowledged absence from the United States for a four-month time period in 1987 exceeds the 45 days used to determine whether the absence was brief and casual. The applicant has not indicated that his stay in Brazil for four months was due to any emergent reason. As a result, the applicant is found not to have resided continuously in the United States throughout the requisite period.

The AAO has reviewed the entire record in this matter and does not find that the applicant has established his continuous residence for the applicable time period. 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. The affidavit submitted lacks probative value for the reasons above noted. Given the applicant's testimony that he was outside the United States for a four-month period during the requisite period, the applicant has not established continuous residence for the requisite period. The applicant has failed to meet his burden of proof and failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through the date he attempted to file a Form I-687 application, as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M--*, 20 I&N Dec. 77. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis. The appeal will be dismissed.

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