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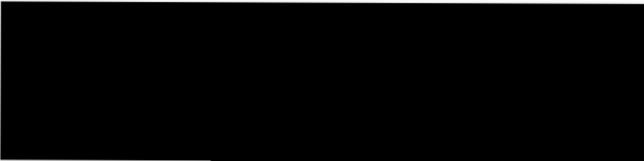
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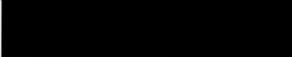
U.S. Citizenship
and Immigration
Services

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FILE:



Office: LOS ANGELES

Date:

MAY 27 2008

MSC 06 073 11885

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, Los Angeles, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director denied the application based on the determination that the applicant admitted to having been absent from the United States for over 45 days and, thereby, failed to establish that he resided continuously in the United States during the statutory period.

On appeal, the applicant recants his earlier statement, claiming that the information he previously provided was erroneous.

An applicant for temporary residence 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 Immigration and Nationality 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 until the date of filing the application. 8 C.F.R. § 245a.2(b)(1).

Under the CSS/Newman Settlement Agreements, 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. 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, the applicant may nevertheless establish that he resided in the United States continuously if he is able to determine that his untimely return 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."

In the present matter, the applicant made a statement on April 21, 2006 in the presence of a Spanish speaking translator, claiming that he departed the United States in August of 1987 for two months for the purpose of visiting his family.

On appeal, the applicant recants this statement, claiming that he did not take time to consider the questions posed to him and the responses he was giving to his interviewer. Rather, the applicant now claims that his absence from the United States was only for a period of 30 days, rather than the two months he previously claimed. However, the applicant's prior statement was given under oath and in the presence of a translator to ensure that the information provided by the applicant was accurate and truthful. The fact that the applicant now recants his prior statement and materially alters it to fit the regulatory guidelines detracts from the applicant's credibility. Moreover, 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)). Thus, the applicant cannot merely retract his earlier statement without providing documentation to support the new claim made on appeal.

Additionally, even if the applicant had not been absent from the United States for a prolonged time period, 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).

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.

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.

In the present matter, the record suggests that the applicant did not provide sufficient evidence to show that he resided in the United States during the requisite period, regardless of the prolonged absence. In support of the Form I-687, the applicant submitted the following documentation:

1. A sworn declaration dated November 28, 2005 from [REDACTED] who attested to the applicant's residence in the United States since 1981 even though she claimed that she arrived to the United States in 1985. Thus, despite the affiant's attestation, she did not have personal knowledge of the applicant residence prior to her 1985 arrival to the United States. Further, the affiant provided no details about the applicant's purported residence in the United States since 1985. As such, this statement will be afforded minimal evidentiary weight in corroborating the applicant's claim.
2. Affidavits dated November 25, 2005 and November 26, 2005 from [REDACTED] and [REDACTED] respectively. Both affiants attested to the applicant's residence in the United States since 1981 and claimed that they resided in the same neighborhood with the applicant; more specifically, [REDACTED] stated that he and the applicant lived in the same apartment complex in 1981. However, neither affiant specified an address or even the neighborhood where they purportedly resided, nor did they provide any other details to lend credibility to their alleged 24-year relationships with the applicant. As such, these statements will be afforded minimal evidentiary weight in corroborating the applicant's claim.
3. Affidavits dated November 21, 2005 and November 22, 2005 from [REDACTED] and [REDACTED] respectively. Both affiants claimed to have known the of the applicant's residence in the United States since the commencement of the statutory period. Although both affiants claimed that they resided in the same neighborhoods with the applicant and, at times, were employed by the same employers, neither affiant specified any of the applicant's addresses or employers during the relevant time period. As the affiants provided no details to lend credibility to their alleged relationships of 23 or more years with the applicant, their statements will be afforded minimal weight as evidence of the applicant's purported residence in the United States during the statutory period.
4. An affidavit dated November 22, 2005 from [REDACTED] who claimed that she came to the United States in 1983 and resided in the same neighborhood as the applicant. She stated that she met the applicant when he was living with his sister with whom she remained friends. However, the affiant provided no details to lend credibility to her alleged 22-year relationship with the applicant. As such, this statement will be afforded minimal weight as evidence of the applicant's residence in the United States during the statutory period.
5. An affidavit dated November 22, 2005 from [REDACTED] who claimed that she knew the applicant since prior to their respective arrivals in the United States and that she has known of the applicant's residence in the United States since. While she specifically

claimed to have personal knowledge of his residing in Northridge, California initially, she did not provide any dates or addresses in connection with this claimed residence in the United States during the relevant time period. Furthermore, although the affiant claimed to have maintained a personal relationship with the applicant, including attending various social gatherings and visiting the applicant, she did not provide any details that would lend credibility to her alleged 24-year relationship with the applicant or to the claim that the applicant has resided in the United States during the statutory period. As such, this statement will be afforded minimal evidentiary weight.

6. Three photographs of the applicant at various undetermined locations. While these appear to be photographs of the applicant in the past, there are no distinguishing factors that enable the AAO to determine where and when these photographs were taken. As such, these documents have no probative value in corroborating the applicant's claim.

In summary, aside from the applicant's prolonged absence, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the 1981-88 period, and has submitted deficient affidavits to corroborate his claimed residence during that time period. The absence of sufficiently detailed supporting 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 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 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. Therefore, on this additional basis, the applicant is ineligible for temporary resident status under section 245A of the Act.

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