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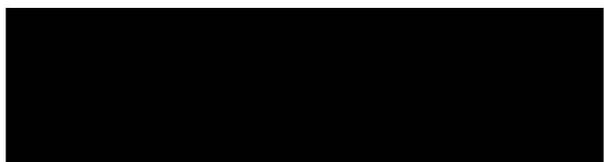
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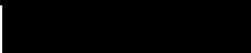
U.S. Citizenship
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MSC-05-237-15146

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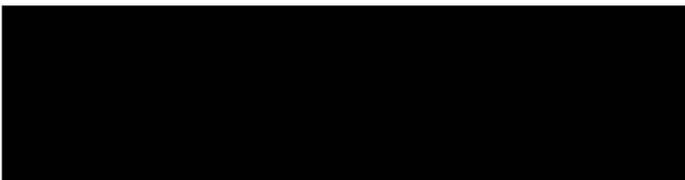
Applicant:



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:



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 (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 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 he had continuously resided or had been continuously physically present in the United States for the duration of the requisite period. The director noted the multiple inconsistencies with regard to the applicant's claimed entry into and his apparent absences from the United States during the requisite period. The director also noted the apparent differences in the applicant's signatures and indicated that the evidence submitted appeared to have been deceitfully created or obtained. The director denied the application, finding that the applicant had not met his burden of proof 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 the interviewing officer misstated the facts and recorded incorrect information. He also asserts that there was no proof that the documentation he submitted as evidence was fraudulent or deceitfully created. The applicant further asserts his claim of eligibility for temporary resident status. He does not submit any new evidence 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 his 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 Citizenship and Immigration Services (CIS) on May 25, 2005. On his Form I-687 application at part #30 where the applicant was asked to list his places of residence he indicated that he resided at [REDACTED] New York, New York from October of 1980 to October of 1989. He also indicated at part 33 of his I-687 application that he was employed by Yips Restaurant of New York as a cashier from November of 1980 to June of 1986. The applicant indicated at part #32 of his I-687 application that he was absent from the United States from June of 1986 to July of 1986, from March of 1989 to March of 1989, and from July of 1996 to July of 1996.

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

- A copy of a page from the applicant's Malaysian passport which shows that he was absent from the United States from June 27, 1988 to July 2, 1988, and from March 31, 1989 to April 10, 1989. Although outside the statutory period for continuous residence, the information is inconsistent with what the applicant listed on his Form I-687 application at part #32, where he did not list any absences from the United States in 1988. The applicant did not submit passport pages showing his claimed departure from the United States in June 1986.
- A copy of a lease agreement bearing the applicant's name as tenant for the premises known as [REDACTED] New York, New York, with lease dates from February 1, 1981 to January 31, 1983. The agreement is signed but not dated. No other lease agreement is contained in the record. This information is inconsistent with what the applicant indicated on his Form I-687 application at part #30 where he indicated that he resided at the above noted address from October of 1980 to October of 1989.
- Copies of bank transaction statements from United Orient Bank bearing the applicant's name and address of [REDACTED] New York, New York, and dated November of 1981, June of 1982, May of 1983, March of 1984, and January of 1985. The 1984 and 1985 addresses that appear on the bank statements are inconsistent with the information contained in the applicant's lease agreement in that the agreement indicated the lease term at the [REDACTED] address to be from February of 1981 to January 31, 1983.

The applicant also submitted a declaration from [REDACTED] in which he stated that he has had a professional relationship since the 4th quarter of tax year 1981 and that he met the applicant at the Yips Restaurant located in New York where he routinely dined. He also stated that he and the applicant have developed and maintained a friendship since. Here, the declarant fails to specify the frequency with which he saw and communicated with the applicant during the requisite period. The

declarant does not specify the nature of the claimed professional relationship or submit documentary evidence in support of the professional relationship. The declarant also fails to indicate any other detail that would lend credence to his claimed knowledge of the applicant and the applicant's residence in the United States during the requisite period. Because the declaration is significantly lacking in detail, it can be afforded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

The applicant submitted his own statement in which he declared that he entered the United States on October 8, 1980 through the border of Canada and that he left the United States in June of 1986 due to a family emergency, and returned with a visa in July of 1986. Although the record contains evidence of the applicant being issued a visa in Kuala Lumpur in 1986, and he traveling to the United States on that visa in July of 1986, this is insufficient to demonstrate his residence or presence in the United States before that time.

In denying the application the director noted the discrepancies in the evidence submitted by the applicant and the inconsistencies in statements he made during his immigration interview and on his Form I-687. Specifically, the applicant stated in the interview and in a second statement that he first entered the United States with inspection at JFK Airport on July 26, 1986, in contrast to the Form I-687 where he indicated his entry into the United States on October 8, 1980. The director noted that the applicant had failed to establish, by a preponderance of the evidence, his eligibility for the immigration benefit sought.

On appeal, the applicant reasserts his claim of eligibility for temporary resident status and asserts that the interviewing officer misstated the facts and recorded incorrect information. The applicant does not submit any evidence on appeal.

In the instant case, the applicant has failed to submit sufficient evidence or argument to overcome the director's denial. The declaration by [REDACTED] while providing some evidence of the applicant's presence in the United States, is insufficient to establish his continuous unlawful residence in the country throughout the requisite period. The applicant fails to address the inconsistencies found in the record regarding his entry into and absences from the United States. He also fails to adequately address the inconsistencies found in the record pertaining to his place of residence.

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 his date of entry into the United States, residence in and absences from the United States, and his reliance upon declarations with little 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.