



U.S. Citizenship
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Services

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FILE:

MSC-05-168-11730

Office: LOS ANGELES

Date: NOV 25 2008

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, Los Angeles. The decision 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 determined 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 in the decision that during the applicant's interview with immigration officials on February 20, 2007, she stated under oath that she entered the United States in March of 1979 and left the United States in 1985 for a period of one (1) year. The director further noted that the applicant's one year absence exceeded the forty-five (45) day allowance for a single absence and the one-hundred-eighty (180) day allowance on cumulative absences. The director denied the application finding that the applicant had not met her burden of proof and that she 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 was nervous and confused during her immigration interview which resulted in her giving out dates without assurance of what she was saying. The applicant further asserts that she has lived in the United States since 1981, and that her travel date was in 1987 not 1988.

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).

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.

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.2(h)(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."

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.* 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 of proceeding shows that the applicant submitted a Form I-687 Application and Supplement to Citizenship and Immigration Services (CIS), on March 17, 2005.

In denying the application the director noted that the applicant admitted under oath that she was absent from the United States for more than 45 days during the requisite period.

On appeal, the applicant reasserts her claim of eligibility for temporary resident status. The applicant resubmitted copies of affidavits from [REDACTED] who states that he has known the applicant since March of 1979; and [REDACTED] who stated that the have known the applicant since February of 1981. She also resubmitted copies of two rent receipts dated October and November of 1981, pay stubs dated 1987 and 1988, an illegible identification card, and a Form G-361 in which she indicated her date of entry into the United States was February of 1981. Although the documentation is some evidence of the applicant's presence in the United States, it is insufficient to establish her continuous unlawful residence in the United States throughout the requisite period. The applicant submitted the following attestations on appeal:

- An affidavit from [REDACTED] in which he states that he has known the applicant to reside in the United State since 1981 and that the applicant is a friend of his grandmother. He further states that the applicant has become a good friend to his family through the years. The affiant states that he moved in with his grandmother in 1983 after his father died, and that he recalls the applicant leaving the United States for Mexico to have her baby approximately two years after he began living with his grandmother. Here, the affiant fails to specify when he met the applicant, the frequency with which he saw and communicated with the applicant, or the applicant's place of residence during the requisite period. The affiant has failed to demonstrate that his statements concerning the applicant's entry into the United States is based upon his first-hand knowledge of such event and circumstances. Although the affiant states that the applicant left the United States in 1985 to have her baby, he fails to indicate when and if she returned to this country. Because this affidavit is lacking in detail, it can be afforded only minimal weight in establishing that the applicant resided in the United States during the requisite period as claimed.
- A fill-in-the-blank affidavit from [REDACTED] in which he states that to his personal knowledge, the applicant resided in Pacoima, California from August of 1985 to June of 2004. He further states that he met the applicant when she was selling her tamales door-to-door, and would come to his house once a week to sell to his wife and himself. He also states that they became friends, are in contact with each other on a regular basis, and live very close to one another. This statement is inconsistent with what the applicant

indicated on her Form I-687 Application at part #30 where she indicated that she lived in Panorama City, California from March of 1993 to March of 1994, and in Sylmar, California from January of 2002 to June of 2004. There has been no explanation given for the inconsistencies. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Because this affidavit is inconsistent with statements made by the applicant, it can be afforded little weight in establishing that the applicant resided in the United States during the requisite period as claimed.

In the instant case, the applicant has failed to provide sufficient, credible and probative evidence to establish her continuous unlawful residence in the United States throughout the requisite period. She has failed to overcome the issues raised by the director. Although the applicant asserts that she was nervous and confused during her interview which caused her to convey inaccurate information concerning her one year absence from the United States, she has failed to submit independent documentation to substantiate that claim. The evidence contained in the record of proceeding is insufficient to substantiate the applicant's claimed eligibility for the immigration benefit sought.

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 reliance upon documents with minimal probative value, and her absence from the United States in excess of the 45 day statutory limitation and the 180 day limitation on absences outside the United States during the statutory period, 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.¹

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

¹ It is noted by the AAO that in case file _____ the applicant _____ states on his Form I-817, Application for Family Unity Benefits, at part #4 dated March 17, 2005, that the applicant F _____ is his mother and at part #1 that he was born on _____ in Mexico. The applicant in this case has failed to disclose her absence from the United States in 1982. See *Matter of Ho*, 19 I&N Dec. 582.