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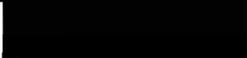
**U.S. Citizenship
and Immigration
Services**

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FILE:



Office: NEW YORK

Date:

SEP 18 2008

MSC 06 101 18515

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, New York. 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. The director determined that the applicant had not established by a preponderance of the evidence that he had continuously resided in the United States in an unlawful status for the duration of the requisite period. Specifically, the director determined that the applicant had provided conflicting information concerning his residence in the United States, noting that the applicant testified that he left the United States to visit his country for three months in 1984 which disrupted the applicant's claim of continuous residence for the requisite period. 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 states, in part, that he left the United States at the end of October in 1984, and returned to the United States on January 19, 1985 (a period of approximately 80 days), and that his absence was for a period of time less than 90 days which does not cause an interruption of continuous residence during the requisite period. The record establishes that the applicant departed the United States on October 21, 1984, and that he traveled to Mali for a family emergency. The applicant then reentered the United States on January 19, 1985, representing an absence of 89 days.

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 245(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 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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6).

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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he resided in the United States for the duration of the requisite period.

On appeal, the applicant submitted an amendment to page four of his Form I-687, noting that he traveled to Mali for a family visit from October of 1984 until January 19, 1985. The content of this amendment is confirmed by the applicant's sworn statement dated August 10, 1990, wherein he states that he left the United States on October 21, 1984 and returned on January 19, 1985 (an absence of 89 days). The applicant states that the reason for travel was “Mother's sickness and Family emergencies.”

The regulation at 8 C.F.R. § 245a.2(6)(h)(i) states as follows:

(h) *Continuous residence.* (1) For the purpose of this Act, 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:

(i) 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 for temporary resident status is filed, unless the alien can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed;

....

In view of the above regulation, the applicant has failed to establish continuous residence during the requisite period because his 1984 - 1985 absence from the United States exceeded, by his own admission, 45 days. The record does not establish that the applicant's return to the United States could not be accomplished until the lapse of 89 days due to emergent reasons. Although the term "emergent reasons" is not defined by regulation, *Matter of C-*, 19 I. & N. Dec. 808 (Comm. 1988), holds that emergent means "coming unexpectedly into being." The applicant states that he traveled to Mali due to his mother's illness and unnamed family emergencies. The applicant has provided no medical records or other evidence to corroborate his claim of family illness or emergency. Simply going on the 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 190 (Reg. Comm. 1972)). The applicant has not established emergent reasons causing his prolonged absence from the United States. The record does not establish that the absence was caused by an event which came "unexpectedly into being."

The applicant submitted additional evidence in support of his application. That evidence, however, even if the applicant's 89 day absence from this country during the requisite period were not considered, would be insufficient to establish the applicant's continuous unlawful residence in the United States for the duration of the requisite period.

WITNESS STATEMENTS

- The applicant submitted witness statements from the following individuals: [REDACTED]; and [REDACTED]. The witness statements are general in nature and state basically that each witness knows the applicant and that the applicant has resided in the United States for the requisite period, or some portion thereof. None of the statements, however, provide detailed information of the witness's relationship with the applicant or establish that the applicant has resided continuously and unlawfully in the United States for the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. The witness

statements do not provide detailed information establishing the extent of the witness's association or relationship with the applicant, or detailed accounts of the witness's ongoing association establishing a relationship under which the witness could be reasonably expected to have personal knowledge of the applicant's residence, activities and whereabouts during the requisite period covered by the applicant's Form I-687. To be probative, witness statements must do more than simply state that a witness knows an applicant and that the applicant has lived in the United States for a specific time period. The proof must be presented in sufficient detail to establish that a relationship does in fact exist, how the relationship was established and sustained, and that the witness does, by virtue of that relationship, have knowledge of the facts alleged. The witness statements, therefore, are of little probative value. Given the applicant's reliance upon documents with minimal probative value, it is concluded that the witness statements presented fail to establish his continuous residence in an unlawful status in the United States for the requisite period.

EMPLOYMENT LETTERS

- In a letter dated July 22, 1988 the General Manager of [REDACTED]s (restaurant), states that the applicant has been an employee since September of 1987. Mr. [REDACTED] further states that the applicant worked as a cook, and that his prospects for future employment are excellent.
- In a letter dated November 19, 1986, [REDACTED] General Manager of Batons (a restaurant) states that the applicant had been employed as a cook for the past 17 months, earning a weekly salary of \$300.00.
- [REDACTED] submitted an affidavit stating that the applicant was employed from December of 1981 until December of 1984 as a housekeeper earning \$180.00 per week. The affidavit was submitted on the letterhead of Linden Hill Hotel.

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment must: provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's duties; 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. The employment statements submitted by the applicant are of little probative value as they fail to provide all information required by the above-cited regulation. The statements do not provide the applicant's address during employment, show periods of layoff (or state that there were none), or declare whether the information attested to was taken from employment records, and state whether any such records are available for inspection and if not, why not.

ATTESTATION

The applicant submitted a statement from [REDACTED] who identifies his position as “Public Information,” on the letterhead of Masjid Malcolm Shabazz. Mr. [REDACTED] states that the applicant is a member of the Muslim Community, and that “he [the applicant] has been here since Sep. [sic]1981. He attends Friday Jumah Prayer Services and other Prayer Services here at the Masjid Malcolm Shabazz.”

The regulation at 8 C.F.R. § 245a.2(d)(3)(v), as hereinafter set forth, provides requirements for attestations made on behalf of an applicant by churches, unions, or other organizations:

- (v) Attestations by churches, unions, or other organizations to the applicant’s residence by letter which:
 - (A) Identifies applicant by name;
 - (B) Is signed by an official (whose title is shown);
 - (C) Shows inclusive dates of membership;
 - (D) States the address where applicant resided during membership period;
 - (E) Includes the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery;
 - (F) Establishes how the author knows the applicant; and
 - (G) Establishes the origin of the information being attested to.

The attestation does not establish how its author knows the applicant, nor does it establish the origin of the information being attested to (i.e., the information is taken from parish membership records). The statement is, therefore, of little evidentiary value as it does not comply with the requirements of the above-cited regulation.

Therefore, based upon the foregoing, the applicant 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.