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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

PUBLIC COPY



FILE:



MSC 06 097 13154

Office: NEW YORK

Date:

JUN 19 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. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

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 (together comprising the I-687 Application). On October 3, 2006, the director issued a Notice of Intent to Deny (NOID) based on the applicant's testimony that she had been absent from the United States for more than 45 days during the requisite period. Specifically, the applicant had testified that she traveled to Brazil in May 1986 to get married and returned to the United States six months later in November 1986. The director found that this extended absence had disrupted the applicant's "continuous residence" in the United States during the requisite period. On October 19, 2006, the applicant submitted a response to the NOID stating that she left the United States to get married and "was not suppose[d] to come back anymore." She further stated that, after approximately one month of marriage, she encountered problems with her husband. She remained in Brazil so that she could resolve these problems through the courts. Once that process was concluded, she returned to the United States

On November 3, 2006 the director denied the application, finding that the letter submitted by the applicant in the NOID was insufficient to overcome the grounds for denial. The director concluded that the applicant had not resided continuously in the United States for the requisite period 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 has submitted a statement in which she again explains that she remained outside the United States in order to resolve problems relating to her husband.

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)(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 shall be regarded as having resided continuously in the United States if at the time the application for temporary resident status is considered filed, as described above pursuant to the CSS/Newman Settlement Agreements, no single absence from the United States has exceeded 45 days, and the aggregate of all absences has not exceeded 180 days during the requisite period unless the applicant can establish that due to emergent reasons the return to the United States could not be accomplished within the time period allowed, the applicant was maintaining a residence in the United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.2(h).

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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.2(d)(6).

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, "[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 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 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.

In this case, the applicant testified under oath before an immigration officer that she first entered the United States in 1980. At part #30 of the I-687 Application, the applicant listed residences in the United States beginning in May of 1980. However, at part #32 of the I-687 Application, which requires applicants to list all absences from the United States, the applicant noted that she was in Brazil from May 1986 to November 1986. The applicant wrote that the purpose of the trip was “to get married.”

The applicant provided a written statement, dated October 19, 2006, explaining that she departed the United States and returned to Brazil “one and a half months before the date of my wedding” and that she “was not suppose[d] to come back anymore.” The applicant further explained that after one month of marriage she encountered problems with her husband and “decided to come back to [the] USA.” The applicant delayed her return to the United States in order to resolve the issues relating to her husband.

As stated above, an applicant for temporary resident status must establish that he or she resided continuously in the United States throughout the requisite period. 8 C.F.R. § 245a.2(b)(2). Continuous unlawful residence is broken if an absence from the United States is more than 45 days on any one trip unless the alien can establish that:

1. Due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed;
2. The alien was maintaining a residence in the United States; and
3. The alien’s departure from the United States was not based on an order of deportation.

See 8 C.F.R. § 245a.2(h)(1)(i).

The applicant was absent from the United States from May to November 1986, a period of more than 45 days. The applicant left the United States to get married and explained in her written statement that “I was not suppose to come back anymore.” This indicates that the applicant may have intended to leave the United States permanently, and thus was not “maintaining a residence in the United States” during her absence.

Further, the applicant has failed to prove that her return to the United States could not be accomplished due to “emergent reasons.” The applicant claims that she encountered problems with her husband shortly after the marriage began and that she remained in Brazil to resolve those problems. To meet her burden of proof, the applicant must provide evidence of eligibility apart from her own testimony. 8 C.F.R. § 245a.2(d)(6). The applicant has not provided evidence beyond her own testimony, such as court records or affidavits from her attorney or from friends and relatives, to support this claim. Therefore, the applicant has failed to meet her burden of proof.

The applicant has provided evidence in support of her application including notarized statements from friends and employers. However, none of these statements address the issue of the applicant's extended absence during the requisite period. The applicant has also submitted documents including a lease with an effective date of April 20, 2002, a lease with an effective date of March 1, 2003, a stub from a utility bill dated December 5, 2005 and an undated check from the applicant's account with HSBC bank. These documents are not probative of the applicant's continuous residence during the requisite period. The applicant has also submitted documents relating to her daughter including photographs, awards and newspaper clippings. These documents are not probative of the applicant's continuous residence during the requisite period.

The applicant has failed to establish by a preponderance of the evidence that she 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.