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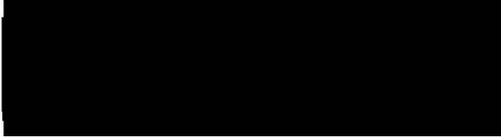
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FILE: [REDACTED]
MSC 05 181 10282

Office: MILWAUKEE

Date: MAY 23 2007



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. The file has 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.

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. [REDACTED] (E.D. Cal) January 23, 2004, and *Felicity Mary Newman, et al., v. United States Immigration and Citizenship Services, et al.*, CIV. NO. [REDACTED] (C.D. Cal) February 17, 2004, (CSS/Newman Settlement Agreements) was denied by the District Director, Chicago, Illinois, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director determined that the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through the date that he attempted to file a Form I-687, Application for Status as a Temporary Resident, with the Immigration and Naturalization Service (the Service), now Citizenship and Immigration Services (CIS), in the original legalization application period between May 5, 1987 to May 4, 1988. Therefore, the district director concluded that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements and denied the application.

On appeal, the applicant states that he has submitted enough evidence to establish his continuous residence in the United States from prior to January 1, 1982 through May 4, 1988.

An alien applying for adjustment to temporary resident status must establish that he or she entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through the date the application is filed. *See* section 245A(a)(2)(A) of the Immigration and Nationality Act (Act) and 8 C.F.R. § 245a.2(b).

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 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."

An alien applying for adjustment to temporary resident status must establish that he or she has been continuously physically present in the United States since November 6, 1986. *See* section 245A(a)(3) of the Act and 8 C.F.R. § 245a.2(b)(1).

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, consistent with the class member definitions set forth in the CSS/Newman Settlement Agreements. See Paragraph 11, page 6 of the CSS Settlement Agreement and paragraph 11, page 10 of the Newman Settlement Agreement.

An alien applying for adjustment of status has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, 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. See 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 including affidavits 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 (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 establish continuous residence in the United States from prior to January 1, 1982 through the date he attempted to file a Form I-687 application with the Service in the original legalization application period from May 5, 1987 to May 4, 1988.

The record shows that the applicant submitted a Form I-687 application and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on March 30, 2005. The applicant indicated on the Form I-687 that he first entered the United States as a nonimmigrant F-1 student in 1980 and was authorized to remain in the United States for the duration of his studies.

On February 8, 2006, the applicant appeared at the Milwaukee, Wisconsin, CIS office for his legalization interview. The applicant told the interviewing officer that he was first admitted to the United States as a nonimmigrant F-1 student to attend ██████████ High School in Franklin, North Carolina. The applicant stated that he attended that school from 1979 to 1983 and that he attended community college in California from 1988 to 1989.

The applicant submitted a letter dated January 13, 2006, from ██████████ Senior Counselor, ██████████ High School in Franklin, North Carolina, stating that the applicant attended ██████████ High School from 1979 through May 1983 and graduated on May 29, 1983, with a college preparatory high school diploma. He provided a photocopy of his high school diploma from ██████████ High School indicating that he graduated in 1983.

The applicant also submitted an affidavit dated December 22, 2005, from ██████████ of St. Petersburg, Florida, stating that the applicant lived in the United States between 1981 and 1988 "based on my personal contacts with the applicant during that period."

The district director noted that the applicant departed the United States for Gambia in December of 1986 and did not return until April 1987. The director, therefore, denied the application on March 17, 2006, because the applicant failed to establish entry into the United States prior to January 1, 1982 and continuous residence in this country from that date to May 4, 1988.

On appeal, the applicant asserts that his absence outside the United States was "brief, casual and innocent." The applicant explains that he returned to Gambia in December 1986 due to his grandmother's death. The applicant claims that when he went to the United States Embassy in Banjul to obtain a nonimmigrant visa to re-enter the United States, he was refused a visa because he did not have "all the necessary and proper documentation required to obtain a visa." The applicant further claims he boarded his return flight as scheduled in January 1987 even though he did not have a valid re-entry visa. The applicant explains that the immigration inspector in New York, New York, deferred his immigration inspection to the Los Angeles, California, Service office for this reason. The applicant states:

The Los Angeles office made the determination that I ought to go back and legally obtain a visa, and I did just that. Shortly thereafter, I left the U.S. in voluntarily [sic] the second week of March 1987 after returning from the Gambia in January of 1987. After subsequently spending nearly another month in the Gambia, I was able to get a visa and therefore returned to the United States the following month of April 1987.

The letter from Ms. [REDACTED] and the applicant's high school diploma from [REDACTED] High School reflect the applicant's residence in the United States from prior to January 1, 1982 through May 1983. However, the applicant has submitted only one affidavit from [REDACTED] to establish his continuous residence in the United States from May 1983 through May 4, 1988. Mr. [REDACTED] states that he has personal knowledge of the applicant's continuous residence in the United States during the requisite period based on his personal contacts with the applicant during that period. However, he does not provide any information regarding the applicant's addresses throughout the requisite period or any other verifiable information to corroborate his statement.

At block #32 of the Form I-687, where applicants are requested to list all absences outside the United States from January 1, 1982 through May 4, 1988, the applicant indicated that he was in Gambia visiting family from December 1986 to April 1987. During his legalization interview the applicant told the interviewing officer that he left the United States at the end of December 1986 and returned to the United States in April 1987. This absence exceeds the 45-day period allowed for a single absence.

On appeal, the applicant claims that his trip to Gambia was due to the death of his grandmother and was therefore intended to be casual and innocent. He further claims that he actually returned to the United States in January 1987 without a valid re-entry visa after being refused at visa at the U.S. Embassy in Banjul. He states that he returned to Gambia the second week of March 1987 and returned to the United States with a valid re-entry visa in April 1987.

The applicant's statements on appeal contradict his previous statements on the Form I-687 and during his legalization interview that he had one absence outside the United States from December 1986 through April 1987 for a family visit. The applicant has not submitted any independent evidence to corroborate his claims on appeal. Indeed, prior to the denial of his application, the applicant made no mention of his grandmother's death, his purported effort to obtain a re-entry visa in Banjul, his deferred inspection in Los Angeles, California, or his purported return to Gambia from March 1987 to April 1987 for the purpose of obtaining a valid re-entry visa. The applicant's revised claim regarding his absence(s) outside the United States raises serious questions regarding his claim.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. Further, it is incumbent on 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. (Comm. 1988).

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. The applicant has failed to submit sufficient credible documentation to meet his burden of proof in establishing that he has resided in the United States since prior to January 1, 1982 by a

preponderance of the evidence as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E-M-*, 20 I&N Dec. at 77.

Given the applicant's reliance upon one affidavit with minimal probative value and the applicant's revised claim on appeal regarding his absence(s) outside the United States, 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 as required under section 245A(a)(2) of the Act. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis.

It is further noted that the applicant indicated he entered the United States in lawful status and remained in lawful status through the spring of 1983. For this additional reason, the application may not be approved.

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