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

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FILE:

MSC-05-188-13304

Office: LOS ANGELES

Date:

AUG 22 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.

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 Director, Los Angeles. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily 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, on April 6, 2005 (together, the I-687 Application). 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 noting that the record of proceeding contains documents signed by the applicant that state that the applicant was living in Guatemala until 1986. The director denied the application as 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 submitted a Form I-694 Notice of Appeal of Decision Under Section 210 or 245A and a statement. On appeal, applicant states that his asylum application was prepared by “notaries” and he could not speak or write in English and states that the applicant was “false and artificial.” However, the applicant admits that he signed the Form I-589, Request for Asylum in the United States and that his “signature made [him] responsible for its contents.” Finally, the applicant argues that the information in the Form I-589 and Form I-130, Petition for Alien Relative should not be given much weight because he was never interviewed for those applications. As of this date, the AAO has not received any additional evidence from counsel or the applicant. Therefore, the record is complete.

As stated in 8 C.F.R. § 103.3(a)(3)(iv), any appeal that fails to state the reason for appeal, or is patently frivolous, will be summarily dismissed.

A review of the decision reveals that the director accurately set forth a legitimate basis for denial of the application. According to documents signed by the applicant, the applicant was not in the United States during the entire requisite period. On January 30, 1989, the applicant signed the Form I-589 under the penalty of perjury and declared that “all the accompanying documents are true and correct to the best of [his] knowledge and belief.” Along with the Form I-589, the applicant submitted a Form G-325A, Biographic Information signed on January 30, 1989.¹ In the Form G-325A, the applicant stated that he lived in Guatemala from February 1982 to August 1986. The applicant also completed a Form G-325A signed on April 3, 2001 for the Form I-130 petition

¹ The Form G-325A filed with the Form I-589 indicates that it was signed on January 30, 1988. The year 1988 appears to be an error, as the Form I-589 was filed in March 1989.

submitted on his behalf. In this second Form G-325A, the applicant stated that he lived in Guatemala from May 1981 to June 1986. The AAO also notes that the applicant's Form I-589 and the Form I-130 indicate that the applicant had a daughter born in Guatemala in 1984. Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. 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, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The applicant is therefore ineligible for the benefit sought.

Beyond the decision of the director, on October 18, 2005, the director requested evidence from the applicant. In the Form I-72, the director requested a record from the Internal Revenue Service (IRS) of the applicant's income tax returns from 1981 to 1989 and a court disposition of the applicant's 2003 arrest. The applicant did not submit the documents requested by the director. The record of proceeding contains interview notes dated September 18, 2005 which state that the applicant was arrested in 2003 for an unpaid ticket and for driving with a suspended driver's license. According to the notes, the applicant stated that he was detained for 72 hours.

The record of proceeding contains dispositions for arrests on September 29, 1992 and on June 21, 1994. The applicant was convicted for a violation of California 14601.1(A) VC misdemeanor – driving with a suspended license for both arrests. According to the record of proceeding the applicant was also arrested for driving with a suspended license in 2003. Although the record of proceeding contains no disposition for this third arrest, the AAO notes that an alien who has been convicted of a felony or of three or more misdemeanors committed in the United States is ineligible for adjustment to Lawful Permanent Resident status. 8 C.F.R. § 245a.18(a)(1).

On appeal, the applicant has not presented any evidence. Although the applicant states that he was not assisted by an attorney but by notaries, there is no remedy available for an applicant who assumes the risk of authorizing an unlicensed attorney or unaccredited representative to undertake representations on his behalf. *See* 8 C.F.R. § 292.1. The AAO only considers complaints based upon ineffective assistance against accredited representatives. *Cf. Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988)(requiring an appellant to meet certain criteria when filing an appeal based on ineffective assistance of counsel).

The applicant also argues that the Forms I-589 and I-130 submitted should not be given much weight because he was not interviewed in connection with those applications. 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. The AAO agrees with the director that the evidence submitted by the applicant has not established that he is eligible for the benefit sought.

The applicant fails to specify how the director made any erroneous conclusion of law or statement of fact in denying the application. As the applicant presents no additional evidence on appeal to overcome the decision of the director, the appeal will be summarily dismissed in accordance with 8 C.F.R. § 103.3(a)(3)(iv).

Pursuant to 8 C.F.R. § 245a.2(c), one felony conviction or three misdemeanor convictions would render the applicant ineligible for adjustment to permanent resident status. The applicant has two misdemeanor convictions and the record of proceeding indicates that the applicant was also arrested in 2003. Although the applicant failed to respond to the director's request for evidence, if the applicant was again convicted of driving with a suspended license then the applicant would be inadmissible and ineligible. Accordingly, the appeal must be dismissed.

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