



U.S. Citizenship
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FILE: [REDACTED]
MSC-06-098-10420

Office: LOS ANGELES

Date: **JUL 15 2008**

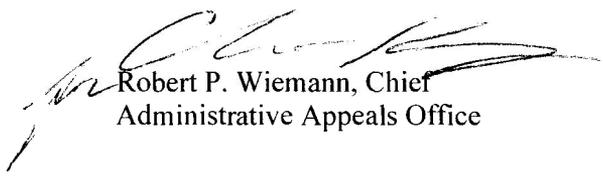
IN RE: Applicant: [REDACTED]

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, Los Angeles. 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. 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 stated that he was intimidated by the officer during his interview. The applicant restated the dates of his absences from the United States during the requisite period. The applicant indicated that he departed the United States in March 1987 to be present for the birth of his twins in Mexico.

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. 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).

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 his 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 shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on January 5, 2006. At part #30 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the applicant listed the following addresses during the requisite period: [REDACTED], Piru, California from 1980 to 1987; and [REDACTED], Grand Rapids, Michigan from 1987 to 1988. At part #32 where applicants were asked to list all absences from the United States since entry, the applicant listed the following trips to Mexico to visit his family: December 1982 to January 1983; December 1984 to January 1985; July 1986 to August 1986; and March 1987 to June 1987. At part #33 where applicants were asked to list all employment in the United States since entry, the applicant listed the following position: Ranch hand for [REDACTED] from 1980 to 1988.

According to 8 C.F.R. § 245a.2(h)(1)(i), 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, no single absence from the United States has exceeded 45 days, and the aggregate of

all absences has not exceeded 180 days between January 1, 1982 through the date the application for temporary resident status is filed, unless the applicant can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed. Since the applicant's visit to Mexico in 1987 spanned the complete months of April and May, it must have exceeded 45 days. A determination must be made as to whether the applicant has established that his failure to accomplish his return within the time period allowed was due to emergent reasons.

The applicant indicated on appeal, as stated above, that he departed the United States in March 1987 to be present for the birth of his twins. Although the regulations do not define the term "emergent reason", *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988) holds that "emergent" means "coming unexpectedly into being." As indicated above, an absence of more than 45 days must be "due to emergent reasons" significant enough that the applicant's return "could not be accomplished within the time period allowed." 8 C.F.R. § 245a.2(h)(1)(i). Therefore, in order to qualify for an exception to the requirement that an individual absence not exceed 45 days, the reasons must be unexpected at the time of departure from the United States and of sufficient magnitude that they made the applicant's return to the United States more than inconvenient, but virtually impossible. That was not the applicant's situation in this case. The applicant stated on appeal that he left the United States for the express purpose of being present for the birth of his children. The delay in the applicant's return was not due to any "emergent reason" – *i.e.*, one that was unforeseen at the time of his departure – because the births of his children were the specific reason for his absence from the United States. The applicant's continued stay in Mexico after the birth of his children appears to have been a matter of personal choice, not a situation that was forced upon him by unexpected events. Therefore, the applicant has not established that his failure to accomplish his return from an absence from the United States exceeding the 45 days allowed by 8 C.F.R. § 245a.2(h)(1)(i) was "due to emergent reasons." As a result, the applicant is found not to have resided continuously in the United States throughout the requisite period.

In an attempt to establish continuous unlawful residence during the requisite period, the applicant provided two attestations. The affidavit from [REDACTED] states that the affiant has known the applicant since March 11, 1980, when the applicant was working at the affiant's ranch. This affidavit fails to specifically state that the applicant resided in the United States at any time during the requisite period other than March 1980. In addition, this affidavit does not conform to regulatory standards for letters from employers as stated in 8 C.F.R. § 245a.2(d)(3)(i). Specifically, the affidavit does not include the applicant's address at the time of employment, periods of layoff, whether or not the information was taken from official company records, where the records are located, and whether CIS may have access to the records. As a result, this affidavit will be given very little weight in determining whether the applicant has established that he resided in the United States during the requisite period.

The applicant also provided an affidavit from [REDACTED], which states that the affiant has known the applicant since March 11, 1980. This affidavit fails to specifically state that the applicant

resided in the United States during the requisite period. The affidavit also fails to provide detail regarding where the affiant met the applicant, the region where the applicant resided during the requisite period, and their frequency of contact. As a result of its lack of detail, this affidavit will be given very little weight.

In denying the application the director concluded 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.

On appeal, the applicant stated that he was intimidated by the officer during his interview. The applicant restated the dates of his absences from the United States during the requisite period. The applicant indicated that he departed the United States in March 1987 to be present for the birth of his twins.

In summary, the applicant has submitted two attestations relating to his residence during the requisite period. Both of these affidavits lack detail, and one of the affidavits does not conform to regulatory standards. The applicant has also indicated that he was absent from the United States for a visit that exceeded 45 days and he failed to establish that his delayed return was “due to emergent reasons.” The absence of sufficiently detailed supporting 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 given his failure to establish that his delayed return from an extended absence from the United States was “due to emergent reasons,” it is concluded that he 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.

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