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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
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Services

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FILE:



Office: CHICAGO

Date: APR 07 2009

MSC-06-088-12080

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 if your case was remanded for further action, you will be contacted.

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom

Acting 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, or *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, Chicago, and 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 to United States Citizenship and Immigration Services (USCIS). The director denied the application, finding that the applicant had failed to meet her burden of proving by a preponderance of the evidence that she entered the United States before January 1, 1982 and resided continuously in the United States throughout the entire requisite period. The director noted that the applicant had failed to maintain continuous residence throughout the entire requisite period since she departed the United States in June 1988 and did not return until August 2001. The director stated that her absence from the United States from 1988 to 2001 exceeded 180 days in violation of section 245a.1 of the Act.

On appeal, the applicant asserts that she resided continuously and was physically present in the United States during the requisite periods. Further, she indicates that the 180-day rule cited by the director in denying the application does not apply to her because she departed the United States after she attempted to file the application for temporary resident status in January 1988.

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 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, *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.

On appeal, the applicant claims that her absence from the United States between June 1988 and August 2001 does not interrupt her continuous residence during the requisite period. She asserts that she was in the United States from before January 1, 1982 to the date she attempted to file the application for temporary resident status in January 1988. As stated above, the applicant for temporary resident status is required to maintain continuous residence in the United States from before January 1, 1982 until the date of filing, which means until the date she filed or attempted to file the application. The applicant states that she attempted to file the Form I-687 in January 1988. The statutory period for physical presence in the United States ends in May, 1988. Therefore, upon a *de novo* review, the AAO withdraws the director's conclusion that the applicant is ineligible for temporary resident status due to her absence from the United States for more than 180 days in 1988.

The sole issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet her burden of proving by a preponderance of the evidence that she entered the United States before January 1, 1982 and had since that date resided continuously in the United States through the date she filed or attempted to file the application for temporary resident status.

On appeal, the applicant declares that she first entered the United States in March 1981. Further, she claims that she became unlawful in August 1981 and continuously resided in the United States in the unlawful status until she attempted to file the application for temporary resident status in January 1988. A review of the record reveals that she would have been a six-year old girl in March 1981. To

establish her continuous residence in the United States between March 1981 and June 1988, the applicant submitted four affidavits from her father, siblings, and friend.

The siblings and friend state in their affidavits that they saw the applicant leaving the Kenyan International Airport to go to the United States in 1981. They assert further that the applicant lived with her father in the United States throughout the requisite period. However, none of them states with any specificity how long the applicant stayed in the United States after her arrival in 1981 or offers detailed information as to where she lived in the United States, whether she attended school during the requisite period, or provides other details about the applicant's life in the United States to establish the credibility of the assertions. The applicant's father, who professed to have met the applicant upon her arrival in the United States and that she lived with him throughout the requisite period, did not provide detailed information in his affidavit as to where he and his daughter resided, what they did in the United States during the requisite period, whether the applicant attended school, and did not describe the circumstances of his life with the applicant in the United States. Simply listing the address at which the applicant lived during the requisite period without providing any detail about the events and circumstances of the applicant's life in the United States during the requisite period does not establish her continuous residence in the United States since before January 1, 1982 and through June 1988. Moreover, the applicant's father did not submit any contemporaneous documents to corroborate his claim that he resided in the United States from 1981 to 1988. The affidavits do not establish that the applicant resided continuously in the United States throughout the requisite period.

The absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period and the lack of detail noted in the record, seriously detract from the credibility of her 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 lack of credible supporting documentation, it is concluded that 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.