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U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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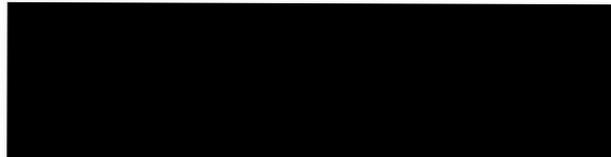
Office: NEW YORK

Date: APR 22 2009

MSC-06-101-17195

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:



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. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed or rejected, 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.

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, 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, 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). The director denied the application, finding that the evidence submitted along with the application was not credible and thus, insufficient to establish eligibility for Temporary Resident Status pursuant to the terms of the CSS/Newman settlement agreements. Further, the director noted that the applicant was ineligible for the benefit sought since she stated during the interview that she left the United States in January 1988 and did not return until 1992. Based on the applicant's statement, the director concluded that she failed to maintain continuous residence in the United States for the duration of the requisite period.

On appeal, counsel for the applicant states that the applicant has testified consistently and credibly about her residence in the United States during the requisite period. Further, counsel indicates that the director failed to properly consider the evidence submitted as well as the testimony of the applicant. Counsel additionally claims that the director erroneously misapplied the law to the facts in this case.

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)(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).

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."

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.

On appeal, counsel claims that the director has erroneously misapplied the law to the facts in this case but makes no specific reference as to which law and facts have been misapplied. The AAO observes that the director in his decision concluded that the applicant's absence from the United

States from January 1988 to 1992 interrupted the continuity of the applicant's residence during the requisite period. As noted above, the regulations require the applicant for temporary resident status to reside in the United States continuously from before January 1, 1982 until the date of filing, which means until the date the applicant filed or attempted to file the application. As it is not clear from the evidence when the applicant filed or attempted to file the application for temporary resident status, the AAO cannot conclude whether or not the applicant's absence between January 1988 and 1992 interrupted her continuous residence in the United States. If the applicant had left the United States during the requisite period for more than 45 days, or if the aggregate total of the applicant's multiple absences equaled to more than 180 days, her continuous residence in the United States during the requisite period would have been interrupted, unless her absence or absences were justified due to emergent reasons.

The sole issue here is whether the applicant has furnished sufficient credible evidence to establish by a preponderance of the evidence that her entry into the United States was before January 1, 1982 and that her residence in the United States was continuous throughout the requisite period.

At her interview with a United States Citizenship and Immigration Service (USCIS) officer on May 25, 2006, the applicant stated that she first came to the United States in 1980 with a B-2 visitor visa and did not leave the United States until January 1988. A review of the applicant's Form I-687 reveals that the applicant left the United States in January 1989, however. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the application. *Id.* at 591. No evidence has been submitted or explanation provided to resolve the inconsistency in the record on this matter.

Additionally, a review of the applicant's passport reveals that the applicant visited Dubai, United Arab Emirates, in September 1986, contrary to the applicant's sworn testimony and application that she resided continuously in the United States between 1980 and January 1988 or 1989.

The affidavit from [REDACTED] states that he has known the applicant since birth and that he helped the applicant to file the application for temporary resident status in March 1988. As noted above, to be probative and credible, an affiant must do more than simply state that he or she knows the applicant and that the applicant has lived in the United States for a specific time period. The affiant must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that he or she does, by virtue of that relationship, have knowledge of the facts alleged. Here, the affiant provides no detail about his relationship with the applicant. Nor does he state the address or addresses at which the applicant lived during the requisite period. The affidavit lacks probative value as evidence of the applicant's continuous residence in the United States during the requisite period.

in his affidavit asserts that he is the person who provides the affidavit of financial support to the applicant. Since the affiant fails to state that he has direct personal knowledge of the applicant's residence in the United States, the affidavit has no probative value as evidence of the applicant's residence in the United States during the requisite period.

Further, a review of the applicant's Form I-687 reveals that the applicant did not list any employment in the United States. Nor did she submit any contemporaneous documents to prove that she resided in the United States continuously during the requisite period.

The absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period as well as inconsistencies 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 and inconsistencies in the record, 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.