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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
and Immigration
Services

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FILE:



Office: CHICAGO

Date:

MAR 25 2009

MSC-06-039-12013

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. 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, Chicago. 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 and determined that the applicant had failed to meet her burden of proving by a preponderance of the evidence that she qualified for the benefit sought specifically because she only submitted a photocopy of an electric bill dated October 23, 1981.

On appeal, the applicant submits a letter from St. Mary Church, two affidavits, and five additional copies of electric bills received between 1981 and 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).

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 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."

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, "[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.

At 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 her claim of continuous residence in the United States since before January 1, 1982 is probably true.

At her interview with a United States Citizenship and Immigration Service (USCIS) officer on October 13, 2006, the applicant claimed that she has been residing in the United States continuously since she first came to the United States in 1980. The applicant, however, did not submit any evidence to support her claim. In response to the director's notice of intent to deny the application, the applicant submitted a copy of an electric bill dated October 23, 1981. In denying the application, the director noted that the evidence submitted was insufficient to support her claim of

continuous residence in the United States since 1980. On appeal, the applicant submits a letter from St. Mary Church, two affidavits and five photocopies of electric bills received between 1982 and 1988.

The letter from St. Mary Church does not specify how long or since when the applicant has been a member of the church, and therefore will not be considered as evidence of her continuous residence.

indicates in her affidavit that her parents have been friends of the applicant since October 1981. She further states that she knew that the applicant has been in the United States since 1981 because her mother has told her. § in her affidavit claims that she and the applicant became good friends after they both attended a church event in El Centro, California, in January 1981. She also states that she came to visit the applicant at her house in Brawley, California several times after her initial contact with the applicant. Both affidavits, however, lack probative value because both the affiants do not indicate that they have direct personal knowledge of when or how the applicant first entered the United States in 1980. They also do not describe with sufficient detail how or when they first met the applicant, how they date their acquaintance with her, how often they met or talked with her during the required period, and where the applicant resided during that time. The lack of details in their affidavits is significant, considering their claim that they have known the applicant since 1980. Thus, the affidavits do not establish the applicant's continuous residence in the United States during the requisite period.

To show that she has resided continuously in the United States throughout the requisite period, the applicant submits five photocopies of electric bills received during the statutory period and claims them as hers. None of these bills, however, can be verified as hers. No contemporaneous documents and no explanatory statements have been submitted to show that the applicant resided at the address specified on the electric bills during the requisite period. The bills have minimal probative value.

The absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period and 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 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.

Beyond the decision of the director, the applicant appears to be ineligible for the benefit sought because of her multiple absences from the United States during the requisite period. As stated above, no single absence for more than 45 days and no multiple absences for a total of more than 180 days from the United States are allowed during the requisite period, unless return cannot be

accomplished due to emergent reasons. At part #32 of the Form I-687, the applicant indicated that she visited Mexico several times between 1983 and 1987. The AAO observes that her visit to Mexico in 1984 from April to June and between September 1987 and November 1987 may have exceeded the maximum allowable time for a single absence and thus, interrupted her continuous residence in the United States during the requisite period. For this additional reason, the application may not be approved.

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