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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration,
Services

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FILE:



Office: LOS ANGELES

Date:

NOV 27 2009

MSC 06 047 14424

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.

Perry Rhew
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 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 denied the application, finding that the applicant had disrupted her period of continuous residence in the United States during the statutory period of January 1, 1982 to May 4, 1988.

On appeal, the applicant states that she qualifies for temporary resident status under section 245A of the Act since she came to the United States in 1978 and stayed one year. The applicant claims on appeal that she left the United States because of a family emergency and when she returned with her parents they were told they were not eligible for legalization.

An applicant shall be regarded as having resided continuously in the United States if, at the time of filing the application for temporary resident status, 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 is filed, unless the alien can establish that due to emergent reasons the return to the United States could not be accomplished within the time period allowed, the alien was maintaining residence in the United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.1(c)(1)(i).

The applicant's sworn statement and the United States Citizenship and Immigration Services (USCIS) adjudication officer's notes reveal that during the applicant's Form I-687 application interview the applicant entered the United States with her family in 1978 from Canada. At that time the applicant was two years old. The applicant claimed that she returned to the Philippines in 1979 because her grandmother died. The applicant explained that she came back to the United States in the middle of 1984, stayed one month and then returned to the Philippines for school. The applicant remained in the Philippines and completed second through 6th grade. The officer's notes indicate that the applicant completed 6th grade in the 1990's. The applicant claimed that she visited her parents during school breaks and after she finished grade school but does not provide the dates or evidence of her visits.

On her Form I-687 application, the applicant listed her residence as [REDACTED], from 1984. The applicant did not claim on her Form I-687 application, at part 30, to reside in the United States from 1978 to 1979, and at part 32, the applicant did not list her absence from the United States in 1984 and the date she returned to the United States. The applicant provided no evidence to confirm her reentry into the United States earlier than January 3, 2001,¹ and

¹ The record contains a copy of the applicant's nonimmigrant B-1/B-2 visa issued on December 16, 2000 in Manila, Philippines, and a copy of the admission stamp showing the applicant's legal entry into the United States on January 3, 2001 in Los Angeles, California.

to show that her absence from the United States from 1979 to 1984 was due to emergent reasons. The applicant provided no evidence of her grandmother's death and there is no explanation as to why she remained in the Philippines from 1979 to 1984. The applicant states in her appeal brief that she wasn't physically present all those years because of family problems and her studies. Therefore, the applicant has interrupted any continuous residence she may have accrued and is not eligible for status as a temporary resident.

Another issue in this proceeding is whether the applicant provided credible evidence to establish that she had entered the United States prior to January 1, 1982, and thereafter continuously resided in the United States in an unlawful status for the duration of the requisite period.

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 245(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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6).

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.

The documentation that the applicant submits in support of her claim to have arrived in the United States before January 1, 1982 and lived in an unlawful status during the requisite period consists of one affidavit of relationship written by a friend and other evidence. The AAO will consider all of the evidence relevant to the requisite period to determine the applicant’s eligibility.

The applicant submitted one affidavit from her neighbor, [REDACTED] to establish her initial entry and residence in the United States during the requisite period. The affiant states that she has personally known and been acquainted with the applicant in the United States and knows that the applicant resided at [REDACTED] from June, 1978 to March, 1990. The affiant does not provide any other information about the applicant.

The AAO finds that the affidavit contradicts the sworn statement given by the applicant during her Form I-687 interview, and is thus of minimal probative value. The affidavit does not include sufficient detailed information about the claimed relationship and the applicant’s continuous residency in the United States since before January 1, 1982 and throughout the requisite period. For instance, the affiant does not supply any details about the applicant’s life, such as, knowledge about her family, education in the Philippines, absences from the United States and shared activities. The affidavit fails to indicate any other details that would lend credence to the claimed acquaintance with the applicant and the applicant’s residence in the United States during the requisite period.

The affidavit does not provide concrete information, specific to the applicant and generated by the asserted association with her, which would reflect and corroborate the extent of this association and demonstrate that the affiant has a sufficient basis for reliable knowledge about the applicant’s residence in the United States. To be considered probative and credible, witness affidavits must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. Their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged. The affidavit is insufficient to establish the applicant’s 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 requisite period.

Considering all the evidence of record, the applicant has failed to submit sufficient evidence to overcome the director’s denial. The applicant has failed to establish by a preponderance of the evidence that she entered the United States before January 1, 1982, and 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.

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