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



U.S. Citizenship
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FILE: [Redacted]
MSC-05-350-12247

Office: LOS ANGELES

Date: **OCT 08 2009**

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. 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.

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, 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 (together comprising the I-687 Application). The director denied the application, finding that the applicant failed to submit sufficient credible evidence to establish his continuous residence in the United States throughout the requisite period. The director further noted that the applicant stated he left the United States in March 1987 for seven months because his grandfather died, but failed to provide proof of the death.

On appeal, the applicant submits a death certificate of the applicant's grandfather who died on October 15, 1987 in Tarlac, the Philippines.

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).

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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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to establish by a preponderance of the evidence that he has resided in the United States

continuously from before January 1, 1982 to the date of filing the application pursuant to the CSS Settlement Agreements.

To prove that he has resided in the United States continuously throughout the requisite period, the applicant submitted three affidavits. [REDACTED] declares in her affidavit that the applicant and his father first entered the United States in 1981 and that they both lived at [REDACTED], [REDACTED], from 1981 to 1990. She, however, fails to describe with any detail what the applicant did with his time, his activities, friendships, interaction with the community or other particulars of his residence in the United States during the requisite period. Neither does she state with specificity how the applicant supported himself while residing in the United States as a minor during that period. Simply stating that the applicant lived in the United States 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 the reliability of the assertions and does not establish his continuous residence in the United States since before January 1, 1982 and throughout the requisite period. The statements will be given nominal weight.

Both [REDACTED] and [REDACTED] indicate in their affidavits that the applicant is their nephew. Both also claim that they have personal knowledge of where the applicant resided in the United States since 1981. Neither provides concrete information, specific to the applicant and generated by the asserted associations with him, which would reflect and corroborate the extent of those associations and demonstrate that either affiant has a sufficient basis for reliable knowledge about the applicant's residence during the time addressed in the affidavits. 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 lack of detail is significant, considering that the affiants above claim they have personal knowledge of where the applicant has resided since 1981. The affidavits are not probative as evidence of the applicant's residence in the United States during the requisite period.

The record shows that the applicant was only ten years old in 1981, when he first entered the United States with his father. None of the evidence submitted above contains detailed information about the applicant's activities and life in the United States during the requisite period. There is no evidence from a responsible caregiver who cared for the applicant when he was a child. There are no school, health, or immunization records. The burden, as noted above, is on the applicant to prove that he entered the United States before January 1, 1982 and that he has resided continuously in the United States since that date and throughout the requisite period. Taken individually and collectively, the evidence submitted does not establish that the applicant has resided in the United States continuously since before January 1, 1982 and throughout the requisite period.

The lack of detail in the record coupled with the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detract from the credibility of his 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 he 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.

Further, the AAO finds that the applicant is ineligible for the benefit sought because he was outside the United States for more than 45 consecutive days during the requisite period and because his absence in 1987 was not deemed brief, casual, and innocent. The applicant stated during the interview that he left the United States from March 1987 to October 1987, for seven months, due to the death of his grandfather in the Philippines. Under the regulations, if an applicant for temporary resident status left the United States for more than 45 days during the requisite period, his or her residence would not be deemed continuous unless his or her inability to return was due to emergent reasons. 8 C.F.R. § 245a.2(h), I.N.A. § 245A(a)(2), 8 U.S.C. § 1255a(a)(2). Additionally, an applicant for temporary resident status is required to be physically present in the United States from November 6, 1986 through the date he or his parent filed or attempted to file the application, even though an absence during this period which is found to be brief, casual, and innocent shall not break his or her continuous physical presence. 8 C.F.R. § 245a.2(l), Section 245A(a)(3) of the Act, 8 U.S.C. § 1255a(a)(3). On appeal, the applicant submits a death certificate of his grandfather, who died on October 15, 1987 in Tarlac, the Philippines. However, the death certificate of the applicant's grandfather alone is not probative as evidence of the applicant's inability to timely return to the United States within the 45-day allowable time period in 1987. The applicant has failed to establish emergent reasons to justify his delayed return to the United States in 1987. He also has failed to prove that his absence in 1987 was brief, casual, and innocent. Therefore, the applicant broke his continuous residence and physical presence in the United States when he left the United States for more than 45 days in 1987. For this additional reason, the application may not be approved.

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