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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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FILE:



Office: SAN FRANCISCO

Date:

OCT 20 2009

MSC-05-160-10587

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.

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, San Francisco, 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 had failed to submit sufficient credible evidence to prove that she had continuously resided in the United States since before January 1, 1982.

On appeal, the applicant maintains that she has continuously resided in the United States since 1981 and submits an additional affidavit.

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 furnished 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 that she has resided in the United States throughout the requisite period.

The applicant stated during the interview that she first entered the United States without inspection when she was ten years old with her mother in May 1981. The applicant further claimed that she traveled outside the United States in December 1986 to visit her family in Senegal, and returned on April 4, 1987 to resume her residence in the United States. She indicated that she came with a tourist visa when she reentered the United States in April 1987.

To prove that she resided and was physically present in the United States during the requisite periods, the applicant submitted an affidavit, two declarations, and a letter from Masjid Malcolm Shabazz. The letter from Masjid Malcolm Shabazz states that the applicant has been in the United States since September 1981, but the author provides no further information about her membership with the organization as prescribed by the regulations at 8 C.F.R. § 245a.2(d)(3)(v). Specifically, the author fails to include in his letter the inclusive dates of the applicant's membership, the address or addresses where the applicant resided during her membership period, how he knows the applicant, and where he acquired the information relating to the applicant's membership in the organization. Because this letter fails to contain most of the information about the applicant's membership in the organization as required by the regulations, it can only be accorded minimal probative value as evidence of the applicant's claim of eligibility for the benefit sought. Further weakening the probative value of the letter is the applicant's failure to list her membership in or affiliation with the organization at part #31 of her Form I-687.

█ claims in his affidavit that the applicant lived in his home at █ New York, New York, from 1981 to 1991. This information, however, is inconsistent with the information at part #30 of the applicant's Form I-687, where she is required to list all of her residences in the United States since her first entry into the United States. The affiant additionally provides no detailed information about the applicant's activities, her friendships, interaction with the community, or other particulars of her residence in the United States during the requisite period. Nor does he state how the applicant supported herself financially as a minor while residing in the United States during that period. The lack of detail is significant, considering that the applicant was only ten years of age in 1981. To be considered probative and credible, 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. Simply stating that the applicant has 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 the applicant's continuous residence in the United States since before January 1, 1982 and throughout the requisite period. The affidavit will be given nominal weight.

Similarly, the witness statements from █ and █ will be given nominal weight, because neither █ nor █ describes with any detail her knowledge of the events and circumstances of the applicant's life and whereabouts in the United States during the requisite period.

On appeal, the applicant submits an additional affidavit from █ Mr. █ asserts that the applicant lived with him from 1981 to 1991. The affidavit will be given nominal weight as it does not contain any facts detailing the events and circumstances of the applicant's life in the United States during the requisite period. The applicant was ten years old in 1981. No school, medical, or immunization records have been submitted. The applicant additionally fails to

provide any evidence from a responsible caregiver who cared for the applicant when she was a child. Taken individually and collectively, the AAO agrees with the director that the evidence submitted in this proceeding does not establish by a preponderance of the evidence that the applicant entered the United States before January 1, 1982 and that she has continuously resided in the United States 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 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.

Beyond the director's decision, the AAO finds that the applicant is ineligible for the benefit sought because she was outside the United States for more than 45 consecutive days during the requisite period, from December 1986 to April 4, 1987, and because her absence between those dates was not deemed brief, casual, and innocent. As indicated above, 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 she or her 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). Here, the applicant stated during the interview that she left the United States to visit her family in Senegal from December 1986 to April 4, 1987. This absence was for more than the maximum allowable time for a single absence and is not found to be brief, casual, and innocent. The record contains no evidence of emergent reasons purporting to explain why the applicant could not timely return to the United States after she left in December 1986. Additionally, nowhere in the record has the applicant claimed that her absence during the requisite period was brief, casual, and innocent. The applicant broke her continuous residence and physical presence in the United States when she left the United States for more than 45 days in December 1986. The application may not be approved for this additional reason.

Further, the AAO notes that the applicant's stated reentry into the United States on April 4, 1987, with a visitor's visa is inconsistent with her intention to resume permanent residence in the United States on that date. Thus, the applicant is inadmissible to the United States on the grounds of materially misrepresenting a material fact and is therefore, ineligible for the benefit sought. Section 212(a)(6)(C) of the Act; 8 U.S.C. § 1182(a)(6)(C); 8 C.F.R. § 245a.2(c)(3).

Although the applicant's inadmissibility may be waived "for humanitarian purposes, to assure family unity or when it is otherwise in the public interest," pursuant to Section 245A(d)(2)(B)(i) of the Act; 8 U.S.C. § 1255a(d)(2)(B)(i); 8 C.F.R. § 245a.18(c), the applicant has neither filed nor obtained a waiver of inadmissibility. For this additional reason, the application may not be approved.

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