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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**



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DATE: **JUN 20 2011**

Office: TEXAS SERVICE CENTER

FILE: 


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. 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 applicant's 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, Texas Service Center. 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 noted that the applicant failed to submit sufficient evidence of either her entry to the United States prior to January 1, 1982 or her continuous residence in the United States throughout the relevant period. Thus, the director concluded that the applicant failed to establish her eligibility for the benefit sought and denied the application on May 26, 2010.

On appeal, the applicant asserts that she is eligible for legalization benefits. She provides a written statement that addresses the deficiencies noted in the record regarding her residence in the United States during the relevant period.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The AAO finds that the applicant is not eligible for temporary resident status because she has not provided sufficient evidence of either her entry to the United States prior to January 1, 1982 or her continuous residence in the United States. Beyond the decision of the director, the AAO finds that the applicant is ineligible for temporary resident status because she has been convicted of a federal felony, and she is inadmissible to the United States because she was ordered deported by an immigration judge.

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)(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).

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 applicant is not eligible for temporary resident status because she has not established that she (1) entered the United States before January 1, 1982 and (2) has continuously resided in the United States in an unlawful status throughout the relevant period. In support of her eligibility, the applicant submits written statements from family members [REDACTED]

Although the affiants state that the applicant lived in the United States during the relevant period, their statements do not supply enough details to be considered probative. The declarants all state that they live in India and account only for the applicant's visits to India during the relevant period. None of the declarants indicate that they ever visited the applicant in the United States. Therefore they lack direct, personal knowledge.

Furthermore, the applicant testified on several occasions that she departed the United States and

returned to India on three occasions during the relevant period: November 1982 until February 1983; November 1983 until February 1984 and April 1987 until June 1987. On May 11, 2010, the applicant submitted a signed statement indicating that each of these trips was approximately three months.

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 not indicated that her return to the United States was unexpectedly delayed. Each of these absences constitutes a break in any continuous residence that the applicant may have established.

The applicant is also ineligible for temporary resident status as an alien who has been convicted of a felony.

An applicant who has been convicted of a felony or three or more misdemeanors in the United States is ineligible for adjustment to temporary resident status. Section 245A(a)(4)(B) of the Immigration and Nationality Act (the Act); 8 U.S.C. § 1255a(a)(4)(B). The regulations provide relevant definitions at 8 C.F.R. § 245a.

"Misdemeanor" means a crime committed in the United States, either (1) punishable by imprisonment for a term of one year or less, regardless of the term actually served, if any; or (2) a crime treated as a misdemeanor under 8 C.F.R. § 245a.1(p). For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor. 8 C.F.R. § 245a.1(o).

"Felony" means a crime committed in the United States punishable by imprisonment for a term of more than one year, regardless of the term actually served, if any. There is an exception when the offense is defined by the state as a misdemeanor and the sentence actually imposed is one year or less, regardless of the term actually served. Under this exception, for purposes of 8 C.F.R. § 245a, the crime shall be treated as a misdemeanor. 8 C.F.R. § 245a.1(p).

On May 9, 2001, the applicant was convicted in United States District Court, Eastern District of Virginia, Norfolk Division of violating 18 USC § 1542, *False Statement in Application for a*

Passport (Case no. [REDACTED]). This offense is punishable by imprisonment for a term of more than one year and constitutes a felony under 8 C.F.R. § 245a.1(p). Thus, the applicant is ineligible for temporary resident status. This ground of eligibility cannot be waived.¹

Finally, the applicant may inadmissible to the United States pursuant to Section 237 (a)(1)(D) of the Act, an alien who falsely represents or is falsely representing himself or herself to be a citizen of the United States for any purpose or benefit under the Act or a federal law. The applicant was ordered removed by an immigration judge on November 12, 2002 and her application for cancellation of removal was denied. The Board of Immigration Appeals subsequently dismissed her appeal and denied her motion to reopen.

Section 245A(a)(4)(A) of the Act requires an alien to establish that he or she is admissible to the United States as an immigrant in order to be eligible for temporary resident status. Section 245A(a)(4)(A) of the Act, 8 U.S.C. § 1255a(a)(4)(A). Section 212(a)(9)(A)(ii)(II) of the Act renders inadmissible aliens who departed the United States while an order of removal was outstanding and who seek admission within 10 years of the date of the alien's departure. Section 212(a)(9)(A)(ii)(II) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii)(II). It is unclear from the record whether the applicant has actually departed the United States since she was ordered removed, however, the applicant bears the burden of proving her admissibility.

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that he 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 has also failed to establish her admissibility to the United States. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis.

¹ The Board of Immigration Appeals (BIA) determined that the applicant's conviction under 18 USC § 1542, *False Statement in Application for a Passport* (Case no. [REDACTED]) constituted a crime involving moral turpitude. Although the Immigration and Nationality Act does not define crimes of moral turpitude, traditionally, as in this case, these crimes have often involved fraud. *Jordan v. DeGeorge*, 341 U.S. 223, 227. The AAO notes that any crime involving fraud is a crime involving moral turpitude. *Burr v. INS*, 350 F.2d 87, 91 (9th Cir. 1965), *cert denied*, 383 U.S. 915 (1966). Furthermore, the BIA has held that convictions for making false statements on an application for a United States passport are crimes involving moral turpitude. *Matter of Correa-Garces*, 20 I. & N. Dec. 451. Therefore, the AAO finds the applicant to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having committed a crime involving moral turpitude. The applicant has applied for a waiver of Section 212(a)(6)(C)(i), however, having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

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