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U.S. Citizenship
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Services

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FILE:



Office: BOSTON

Date:

DEC 11 2007

MSC-05-235-11030

IN RE:

Applicant:



APPLICATION:

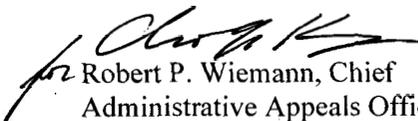
Application for Status as a Temporary Resident pursuant to Section 245A of the
Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, 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.


for Robert P. Wiemann, 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 District Director, Boston. 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 erroneously stated that the applicant had exceeded the 180-day limit on absences from the United States during the requisite period. The director also erroneously stated that the applicant was unable to substantiate her claim of having entered the United States illegally prior to January 1, 1982 and prove that she was continuously physically present in the United States since January 1, 1982 until she filed her application for temporary resident status, instead of that the applicant had not established by a preponderance of the evidence that she had continuously resided in the United States in an unlawful status for the duration of the requisite period. The director's misstatements are harmless error because the AAO conducts a de novo review, evaluating the sufficiency of the evidence in the record according to its probative value and credibility as required by the regulation at 8 C.F.R. § 245a.2(d)(6).

On appeal, the applicant explained that she was absent from the United States for a total of 144 days, and each individual absence did not exceed 45 days. The applicant also provided a declaration she had already submitted.

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).

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 issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that she resided in the United States for the duration of the requisite period. Here, the submitted evidence is not relevant, probative, and credible.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on May 23, 2005. At part #30 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the applicant listed the following addresses: [REDACTED], Connecticut; [REDACTED] East Hartford, Connecticut; [REDACTED] Virginia; and [REDACTED], Ohio. The applicant failed to list the dates during which she resided at each address. The applicant’s failure to specify the dates during which she resided in the United States on Form I-687 casts some doubt on whether or not the applicant resided in the United States during the requisite period. At part #32 where applicants were asked to list all absences from the United States since entry, the applicant listed only one trip to Ghana to visit family during the requisite period, from August 1986 to October 1986. The applicant listed multiple additional trips falling outside the requisite period.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided voluminous documentation, mostly in the form of copies of tax returns. However, most of the documents do not relate to the requisite period. The applicant provided two declarations relating to the requisite period.

The declaration from [REDACTED] dated December 8, 2005 states that the declarant first met the applicant in Massachusetts in 1984 or 1985. They met a few times for confidential reasons, and then lost contact until three years ago. This declaration fails to specifically confirm that the applicant resided in the United States during the requisite period.

The declaration from [REDACTED] states that the declarant has known the applicant since 1980 in the United States. The declarant helped the applicant and her mother to apply for temporary resident status between May 1987 and May 1988. The applicant lived with the declarant for several years after her mother had returned to Ghana. The return address listed on the declaration is [REDACTED], East Hartford, Connecticut. This address does not match any of the addresses listed on the applicant's Form I-687. The declarant failed to confirm the manner in which he became acquainted with the applicant and came to assist her in applying for temporary resident status. The declarant also failed to provide any information regarding the applicant's addresses in the United States during the requisite period, including the one he shared with the applicant. As a result, this declaration is found to lack sufficient detail. The declaration is accompanied by documentation of the declarant's residence in the United States during the requisite period. Without additional detail to establish the declarant actually knew the applicant and can confirm her residence during the requisite period, evidence of the declarant's residence fails to establish that the applicant resided in the United States during the requisite period.

In denying the application, the director erroneously stated that the applicant had exceeded the 180-day limit on absences from the United States during the requisite period. According to 8 C.F.R. § 245a.2(h)(1), an applicant for temporary resident status shall be regarded as having resided continuously in the United States if, at the time of filing of the application, 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 for temporary resident status is filed, unless the applicant can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed. As stated above, 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; [REDACTED] Settlement Agreement paragraph 11 at page 10. The director erroneously interpreted the regulation to require that the applicant demonstrate that she continuously resided in the United States beyond the date she initially attempted to apply for temporary resident status. Since the applicant had only one absence from the

United States during the requisite period and did not indicate this absence exceeded 45 days, this absence is not a basis for determining the applicant did not continuously reside in the United States throughout the requisite period.

As mentioned above, the director's error is harmless because the AAO conducts a *de novo* review, evaluating the sufficiency of the evidence in the record according to its probative value and credibility as required by the regulation at 8 C.F.R. § 245a.2(d)(6). The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The director also erroneously stated that the applicant was unable to substantiate her claim of having entered the United States illegally prior to January 1, 1982 and prove that she was continuously physically present in the United States since January 1, 1982 until she filed her application for temporary resident status, instead of that the applicant had not established by a preponderance of the evidence that she had continuously resided in the United States in an unlawful status for the duration of the requisite period. Again, the director's misstatements are harmless error because the AAO conducts a *de novo* review. *See* 5 U.S.C. § 557(b).

On appeal, the applicant explained that she was absent from the United States for a total of 144 days, and each individual absence did not exceed 45 days. The applicant also provided a declaration she had already submitted.

In summary, the applicant has not provided any contemporaneous evidence of her residence in the United States relating to the requisite period, and has submitted declarations from only two people concerning that period. The declaration from Mr. [REDACTED] does not specifically confirm the applicant resided in the United States during the requisite period, and the declaration from Mr. [REDACTED] lacks sufficient detail. Without additional evidence, these documents do not establish that the applicant resided in the United States during the requisite period.

The absence of sufficiently detailed supporting documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of this 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 applicant's reliance upon documents with minimal probative value, it is concluded that she has failed to establish continuous residence in an unlawful status in the United States for the requisite period 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.

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