



U.S. Citizenship
and Immigration
Services

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FILE:



Office: NEW YORK

Date: APR 01 2008

MSC 04 356 10135

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 [or Records] 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.

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, New York, 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. The director determined 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. Specifically, the director found the supporting affidavits submitted by the applicant to be suspect, lacking in verifiable information and credibility. Accordingly, the director denied the application, finding that the applicant had not met her burden of proof and was, therefore, not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, counsel for the applicant states that an incorrect address for the applicant was previously provided and now provides what he claims is the correct address. The applicant also supplements the record with a birth certificate of one of her children.

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 Immigration and Nationality Act (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 until the date of filing the application. 8 C.F.R. § 245a.2(b)(1).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and presence in accordance with the regulation at 8 C.F.R. § 245a.2(b), "until the date of filing" shall mean until the date the alien 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.* 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 during the requisite time period. Here the applicant has failed to meet this burden. The record shows that in support of her claim, the applicant provided a translated divorce decree showing the official dissolution of her marriage with her husband. While the document makes reference to a custodial arrangement of the applicant's children, the translation is unintelligible and provides no clear understanding of whether the applicant had custody of any of her children either prior or subsequent to the divorce. The applicant also provided translated birth certificates for three of her children showing that she gave birth abroad in March 1978, January 1980, and December 1980.

The record also contains additional documentation provided by the applicant in support of her application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act. Supporting documentation included five identical form affidavits from [REDACTED] [REDACTED] dated October 31, 2003, October 29, 2003, October 30, 2003, November 1, 2003, and November 2, 2003, respectively. All five affiants provided an identical account of the applicant's residential addresses in the United States from May 1981 through the date of their respective affidavits. While the affiants attested to the applicant's good moral character, none provided any details about the events and circumstances of the applicant's residence in the United States during the relevant statutory period.

In response to the director's notice of intent to deny (NOID), which was issued on February 7, 2006, the applicant provided four additional form affidavits from [REDACTED] and [REDACTED]. As with the prior affidavits, these affidavits also contained an account of the applicant's residential addresses in the United States from May 1981 through the date of the respective affidavits. Although each affiant provided the information about his or her respective first encounter with the applicant, none provided any details about the events and circumstances of the applicant's residence in the

United States during the relevant statutory period. Also, as properly noted by the director, all four affiants as well as the applicant herself provided an incorrect current address for the applicant. Additionally, while [REDACTED] stated that she has known the applicant since June 1981, her account of the applicant's residences goes back to May 1981. This discrepancy causes the AAO to question whether the affiant was even aware of the information to which she attested in the affidavit and to further doubt the veracity of her statements.

On appeal, counsel explains that the applicant mistakenly mentioned an old address when trying to provide her current address. However, this does not account for the same mistake that was similarly made by all four affiants. This peculiar similarity gives rise to doubt as to whether the affiants themselves even provided the information in their affidavits.

Additionally, upon further review of the record, the AAO found a number of anomalies in documents that were originally submitted by the applicant in support of her application under the LIFE Act. The AAO makes note of photocopies of envelopes that the applicant submitted to account for her residence in the United States during various years that fall within the statutory period. Specifically, the envelopes postmarked February 10, 1983, September 8, 1987, and April 1, 1988 gave rise for concern over the authenticity of the documentation submitted. A review of the *2008 Scott Standard Postage Stamp Catalogue* Volume 2 (Scott Publishing Company 2007) revealed that all three envelopes bear stamps that were not issued until after the date of the respective postmarks, thereby establishing that the applicant utilized these documents in a fraudulent manner and made material misrepresentations in an attempt to establish her residence within the United States during the requisite period. Case law precedent has firmly established that doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The fact the envelopes postmarked February 10, 1983, September 8, 1987, and April 1, 1988 bear stamps that were not issued until well after the dates of these postmarks establishes that the applicant utilized documents in a fraudulent manner and made material misrepresentations in an attempt to establish residence within the United States for the requisite period.

Section 212(a)(6)(C) of the Act provides:

Misrepresentation. – (i) In general. – Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

By engaging in such action, the applicant has negated her own credibility as well as the credibility of her claim of continuous residence in this country for the period from prior to January 1, 1982 to May 4, 1988.

In addition, the applicant rendered herself inadmissible to the United States under any visa classification, immigrant or nonimmigrant pursuant to section 212(a)(6)(C) of the Act by committing acts constituting fraud and willful misrepresentation.

The AAO issued a notice to the applicant on February 28, 2008 informing her that it was the AAO's intent to dismiss the appeal based upon the fact that she utilized the postmarked envelopes cited above in a fraudulent manner and made material misrepresentations in an attempt to establish her residence within the United States for the requisite period. The applicant was granted fifteen days to provide substantial evidence to overcome, fully and persuasively, these findings. However, as of the date of this decision the applicant has failed to submit a statement, brief, or evidence addressing the adverse information relating to her claim of residence in the United States since prior to January 1, 1982. As stated above, doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. *See Matter of Ho*, 19 I&N Dec. at 591-92.

The absence of sufficiently detailed supporting documentation and the existence of derogatory information that establishes the applicant used postmarked envelopes in a fraudulent manner and made material misrepresentations all seriously undermine the credibility of the applicant's claim of residence in this country for the requisite period, as well as the credibility of the documents submitted in support of such 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. The applicant has failed to submit sufficient credible documentation to meet her burden of proof in establishing that she has resided in the United States for the duration of the requisite period by a preponderance of the evidence as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M-*, 20 I&N Dec. 77 (Comm. 1989).

Given the applicant's reliance upon documents with minimal or no probative value, it is concluded that she has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through the date she attempted to file a Form I-687 application during the original legalization application period as required under section 245A(a)(2) of the Act. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis. Additionally, because the applicant has failed to provide independent and objective evidence to overcome, fully and persuasively, our finding that she submitted falsified documents, we affirm our prior finding of fraud and find her ineligible for the benefit sought based on her inadmissibility to the United States pursuant to section 212(a)(6)(C) of the Act.

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