

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



61

FILE:



Office: NEW YORK

Date:

APR 16 2008

MSC 05 231 13326

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. 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. Wieman, 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. The appeal will be dismissed.

The district director denied the application because the applicant failed to demonstrate credibly that he entered the United States before January 1, 1982, and thereafter resided in the United States in a continuous unlawful status during the requisite period.

On appeal the applicant argued that the evidence clearly demonstrates the applicant's residence in the United States during the requisite period.

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, *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 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 or petitioner 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 regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant’s employment must provide the applicant’s address at the time of employment, identify the exact period of employment, show periods of layoff, state the applicant’s duties, declare whether the information was taken from company records, and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

The instant Form I-687 application indicates that the applicant signed it on May 10, 2005 and submitted it on May 19, 2005. On that application the applicant stated that he lived at [REDACTED] in Ardsley, New York, from December 1981 to June 1991.

The record contains:

- two residential leases;
- a receipt for the purchase of two car keys from a locksmith, which appears to be April 10, 1984;
- a copy of a receipt for purchases from an appliance store;
- a letter dated April 19, 1988 from Sunny Texaco Incorporated of Ardsley, New York;
- letters from [REDACTED] dated June 13, 1983 and January 10, 1984;
- affidavits dated April 25, 2005 from [REDACTED] and [REDACTED];
- notes from the applicant’s March 7, 2006 interview; and
- photocopies of envelopes addressed to the applicant.

The record contains no other evidence pertinent to the applicant's presence in the United States during the salient period.

The residential leases in the record indicate that the applicant rented a property by himself from January 11, 1982 to December 31, 1983, and jointly with another¹ from July 1, 1986 to June 30, 1987. The leases indicate that [REDACTED] own the property leased and executed the leases.

During those periods, the applicant claimed, on the Form I-687 that he signed on May 10, 2005 to have lived at [REDACTED] in Ardsley. Those leases, however, indicate that address is that of the landlord, and that the property the leased was at [REDACTED], also in Ardsley.

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. Further, the applicant must resolve any inconsistencies in the record with competent, independent, objective evidence. Attempts to explain or reconcile such inconsistencies, absent competent objective evidence sufficient to demonstrate where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

The date of the copied receipt from an appliance store is not entirely clear, but may be May 20, 1985. The customer named on that receipt appears to be [REDACTED] which is the applicant's given name, but the receipt does not contain his last name. Pursuant to 8 C.F.R. § 240a.2(d)(6), in judging the probative value of evidence submitted, greater weight will be given to the submission of original documents.

The April 19, 1988 letter from Sunny Texaco Incorporated of Ardsley, New York indicates that the applicant worked as a cashier there from February 22, 1982 to April 2, 1988. The name of the person who signed that document was not provided, and the signature is illegible. Comparison of the signature on that document and the signature on the residential leases in the record, however, shows that all of the documents were signed by the same person. The applicant submitted a copy of [REDACTED]'s drivers license, indicating that [REDACTED] signed all of these documents.

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers should be on letterhead, if the employer has such stationery, and must include the alien's address at the time of employment, the exact period of employment, periods of layoff, the duties of the alien with respect to that employment, whether the information was taken from official company records, where those records are located, and whether CIS may have access to those records. If employment records are unavailable, the employer must state, in a signed affidavit attested to under penalty of perjury, that they are unavailable, why they are unavailable, and that the employer is willing to testify.

The letter from Sunny Texaco does not state where the applicant lived during his employment. Further, it does not state that the information provided was taken from company records, where

¹ The other tenant's first name is Nadeem. The other tenant's last name is illegible.

those records are located, and that CIS may have access to those records, and does not, in the alternative, include a sworn statement declaring that such records are unavailable, why they are unavailable, and that the employer is willing to testify.

Because it does not conform to the requirements of 8 C.F.R. § 245a.2(d)(3)(i) this employment verification letter will be accorded less weight than it would be if it did conform. However, it remains a document relevant to C.F.R. § 245a.2(d)(3)(vi)(L) to this office.

letters state that the applicant was treated at [REDACTED]'s office on June 6, 1983 and January 10, 1984. Those letters are respectively dated June 13, 1983 and January 10, 1984. The purpose for which those letters were issued is unknown to this office.

In his April 25, 2005 affidavit [REDACTED] stated that he met the applicant during December 1981 in New York and has seen him regularly since then. That affidavit does not state where Mr. [REDACTED] met the applicant, or under what circumstances. Further, it does not state the frequency with which [REDACTED] met the applicant or describe the type of contact they had on those occasions.

In his April 25, 2005 affidavit [REDACTED] stated that he met the applicant during 1984 and has seen him regularly since then. Mr. [REDACTED] also stated that the applicant lived in Ardsley beginning during 1984 and continuing until at least 1991. This office notes that this history of the applicant's residence in the United States conflicts with the version provided on the Form I-687 he signed on May 20, 2005, in which he stated that he began living at that address in Ardsley during December of 1981. Moreover, this affidavit lacks considerable detail on [REDACTED]'s contact with the applicant during the requisite period.

The photocopies of envelopes submitted are addressed to the applicant at [REDACTED] in Ardsley and purport to have been mailed from Pakistan. The postmarks on some of those envelopes, which would demonstrate when they purport to have been received by the post office in Pakistan, are only partially legible.

In a Notice of Intent to Deny (NOID), dated March 7, 2006, the director stated that, because of inconsistencies between the evidence and the applicant's assertions, the applicant's evidence was insufficient to demonstrate his continuous unlawful residence in the United States during the requisite period.

The director noted that, although the applicant submitted copies of residential leases executed by his landlord, [REDACTED], and the applicant stated at his March 7, 2006 interview that [REDACTED] was his roommate, he was unable to provide [REDACTED]'s phone number or spell his first name.³ The director also noted that [REDACTED] claimed to have employed the applicant at a Texaco station.

² The signature on that affidavit shows that this is the same [REDACTED], MD who provided the June 13, 1983 and January 10, 1984 letters.

³ The applicant indicated that [REDACTED]'s first name is [REDACTED] or [REDACTED].

The director noted that, although the applicant stated that he did not own a car during the salient period, one of his items of evidence is a receipt for the purchase of two car keys.

The director also stated that, although the record contains letters purportedly from [REDACTED] MD, a purported New York doctor, [REDACTED] could not be located on a list of New York medical doctors maintained by a New York State licensing website.⁴ This office initially notes that, although [REDACTED] is not now listed on that website, evidence exists at other Internet sites that he did previously practice medicine in New York.

Specifically, web content available at [http://w3.health.state.ny.us/opmc/factions.nsf/cd901a6816701d94852568c0004e3fb7/a8bab88f45f494b085256a4a0047c4a0/\\$FILE/lc111154.pdf](http://w3.health.state.ny.us/opmc/factions.nsf/cd901a6816701d94852568c0004e3fb7/a8bab88f45f494b085256a4a0047c4a0/$FILE/lc111154.pdf) shows that Dr. [REDACTED]'s New York medical license was subsequently revoked for professional misconduct, including allegations of the fraudulent practice of medicine, negligence, incompetence, filing false reports, ordering excessive tests or treatment, and failing to maintain adequate medical records.

Similarly, this office does not find especially daunting the combination of the applicant's assertion that he did not personally own a car and his submission of a receipt for car keys.

In response to the notice of intent to deny the applicant submitted the appliance receipt and the photocopies of envelopes, both of which are described above. In the Notice of Decision, dated July 24, 2006, the director found that the applicant had failed to demonstrate that he resided continuously in the United States during the requisite period and denied the application. In that decision the director stated that the date on the appliance receipt and the dates of the postmarks on the photocopied envelopes are illegible.

On appeal, the applicant contested the director's assertion that the dates on the receipt and envelopes are illegible, and noted that some of the stamps even show the year during which they were issued. The applicant also stated that the evidence submitted is sufficient to demonstrate his eligibility.

On March 11, 2008 this office sent the applicant a notice of adverse evidence. That notice made observations pertinent to the photocopies of envelopes that the applicant provided.

The notice stated that two of the photocopied envelopes submitted are postmarked July 6, 1983. Each of them bears a Siberian Crane Rs.3 stamp, two World Communications Year commemorative Rs.3 stamps, and both Rs.2 stamps of a set commemorating the 25th Anniversary of Indonesian-Pakistan Economic and Cultural Cooperation Organization, a total of five stamps.

That notice observed that reference to the 2006 *Scott Standard Postage Stamp Catalogue*, Volume 5 (Stamp Catalog), indicates that the stamps on those envelopes were not issued on the dates that the envelopes are postmarked.

⁴ The website to which the director referred is maintained by the New York State Office of the Professions and is available at <http://www.op.nysed.gov/opsearches.htm>.

Reference to the Stamp Catalogue at Page 15 indicates that the Siberian crane stamp was first issued on September 8, 1983. The notice of adverse evidence observed that an envelope that was legitimately postmarked on July 6, 1983 could not, therefore, bear that stamp.

Reference to the Stamp Catalogue at Page 15 indicates that the Pakistani World Communications Year 1983 commemorative stamp was first issued on October 9, 1983. The notice of adverse evidence observed that an envelope that was legitimately postmarked on July 6, 1983 could not, therefore, bear that stamp.

Reference to the Stamp Catalogue at Page 15 indicates that the 25th Anniversary of Indonesian-Pakistan Economic and Cultural Cooperation Organization commemorative stamp was first issued on August 19, 1983. The notice of adverse evidence observed that an envelope that was legitimately postmarked on July 6, 1983 could not, therefore, bear that stamp.

The applicant was accorded 15 days to respond to the adverse evidence, but did not respond. The appeal will be adjudicated based upon the record as currently constituted.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he continuously resided in the United States in an unlawful status before January 1, 1982 and until he attempted to file or was caused not to file his initial Form I-687 application during the original legalization period.

Even without considering the discrepancies between the postage stamps and the postmarks on the photocopied envelopes submitted, the irregularities and contradictions between the evidence and the applicant's assertions rendered the evidence in this case unconvincing.

The applicant claimed, on the Form I-687, to have lived at [REDACTED] in Ardsley from December 1981 to June 1991. The leases he provided, however, show that he leased [REDACTED] in Ardsley from January 11, 1982 to December 31, 1983 and from July 1, 1986 to June 30, 1987. Although the leases show that [REDACTED] was the applicant's landlord and lived at a different address, the applicant stated, at his March 7, 2006 interview, that a [REDACTED] whose name he could not spell, was his roommate at [REDACTED] from December 1981 to June 1991.

Although the applicant was informed of these discrepancies in the notice of intent to deny and the notice of decision, he has not addressed them, and certainly not provided the objective evidence necessary to reconcile them pursuant to *Matter of Ho*, 19 I&N Dec. 582. Absent any satisfactory reconciliation, those discrepancies and irregularities are sufficient to so diminish the credibility of the evidence submitted that it is incapable of demonstrating the applicant's eligibility.

The discrepancies pertinent to the envelopes' postage and postmarks, however, destroy the credibility of the applicant's evidence even more thoroughly. That a stamp was postmarked with a date prior to its release is unlikely to result by accident or misunderstanding. Rather, absent the objective evidence required by *Matter of Ho*, the clear and nearly inescapable inference is that the

envelopes upon which the applicant relies were fraudulently produced with an inauthentic postmark to support the applicant's claim of residence in the United States at a time when he was not actually present in the United States.

This office finds that the applicant produced or procured fraudulent documentary evidence and submitted it in an attempt to obtain an immigration benefit. Given that the applicant has submitted fraudulent evidence in this matter, the evidentiary value of the remaining evidence is so reduced that it cannot credibly support the instant application.

The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis. The appeal will be dismissed.

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