



U.S. Citizenship
and Immigration
Services

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FILE:

MSC-05-271-13366

Office: LOS ANGELES

Date: FEB 06 2008

IN RE:

Applicant:

PETITION: 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. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if the matter 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.

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, Los Angeles. 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 determined that the applicant had not established by a preponderance of the evidence that he had continuously resided in the United States in an unlawful status for the duration of the requisite period. The director denied the application, finding that the applicant had not met his 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, the applicant stated that he may have misunderstood questions on the application and failed to provide some of the requested information. The applicant provided additional attestations regarding his residence in the United States. In addition, the applicant provided documents that are not relevant to determining whether he resided 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).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and physical presence, in accordance with the regulation at 8 C.F.R. § 245a.2(b)(1), “until the date of filing” shall mean until the date the applicant attempted to file a completed Form I-687 application and fee or was caused not to timely file. 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 periods, 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 including affidavits is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The regulation at 8 C.F.R. § 245a.2(d)(3)(v) states that attestations by churches, unions, or other organizations to the applicant's residence by letter must: identify applicant by name; be signed by an official (whose title is shown); show inclusive dates of membership; state the address where applicant resided during membership period; include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; establish how the author knows the applicant; and, establish the origin of the information being attested to.

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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to establish continuous residence in the United States from prior to January 1, 1982 through the date he attempted to file a Form I-687 application with the Immigration and Naturalization Service (INS) in the original legalization application period from May 5, 1987 to May 4, 1988. Here, the submitted evidence is not relevant, probative, and credible.

The record includes the Form I-687 application and Form I-687 Supplement, CSS/Newman Class Membership Worksheet, submitted by the applicant to Citizenship and Immigration Services (CIS) on June 28, 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 only the

following address during the requisite period: [REDACTED], Orange, California from November 1981 to February 1988.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided multiple documents. The applicant submitted a copy of a Skin Test for Tuberculosis Exposure dating August 1, 1981 and listing the applicant's name. This document provides some evidence of the applicant's presence in the United States in August 1981.

The applicant also provided a copy of a notice dated September 1, 1986 from Alhambra Community Hospital in California, demanding payment. The notice is addressed to the applicant's mother at the [REDACTED] address and indicates that it regards the applicant. This constitutes evidence the applicant was present in the United States during the period immediately prior to September 1, 1986.

The applicant provided an affidavit from [REDACTED] s that confirms that the applicant has resided in the United States since November 1981. The affiant confirmed the applicant's address during the requisite period and stated that the applicant lived with the affiant at this address starting in 1981. The affiant also stated that, during the time the applicant lived with the affiant, the applicant refused to go to school. This affidavit failed to include details regarding the nature of the applicant's relationship with the affiant, the date and manner in which they became acquainted, and their frequency of contact during the requisite period. As a result, this affidavit is found to lack sufficient detail to confirm that the applicant resided in the United States throughout the requisite period.

The applicant also provided a Report of Health Examination for School Entry dated August 25, 1982. This document was referenced in a notice issued to the applicant on December 11, 2007 by the AAO. The notice explained that the AAO had identified derogatory information that compromises the credibility of the applicant's claim and that the AAO intends to dismiss the applicant's appeal based on this information. As stated in the notice of derogatory information, the health examination report does not appear to be genuine. The original name and date of birth of the child to whom the document related appears to have been eradicated, and the applicant's name and date of birth appears to have been substituted. In addition, the year of issuance of the document appears to have been altered to read "8-25-82." Although more than one month has passed, the applicant failed to respond to the notice of derogatory information. This casts additional doubt on the credibility of the document and on the applicant's claim to have resided in the United States throughout the requisite period.

The applicant also submitted a Savanna School District Report Card for Grade 4, School Year 1986. As stated in the notice of derogatory information, the original name of the child to whom this document related appears to have been eradicated and the applicant's name substituted. In addition, the original school year appears to have been eradicated and the year "1986" substituted. When given the opportunity, the applicant failed to provide any explanation or

additional information in support of the authenticity of this document. Again, the applicant's failure to respond to the concerns raised by the AAO casts additional doubt on the credibility of the document, and on the applicant's claim to have resided in the United States throughout the requisite period.

In the notice of derogatory information the AAO informed the applicant that a CIS officer contacted the Records Department of the Savannah School District on February 1, 2007 in an attempt to verify the applicant's claim to have attended schools in that district. A school district employee informed the officer that she had no record of an individual with the applicant's name and date of birth having attended school in that district. This casts additional doubt on the applicant's claim to have attended school in the United States, on the authenticity of the educational documentation he submitted, and on his claim to have resided in the United States throughout the requisite period.

In summary, the applicant has provided evidence of residence in the United States relating to the 1981-88 period that only relates to a small portion of the requisite period, lacks sufficient detail or is found to be fraudulent. Specifically, the Alhambra Community Hospital notice only relates to the period immediately prior to September 1, 1986. The affidavit from [REDACTED] lacks sufficient detail. The applicant submitted documentation, in the form of a Report of Health Examination for School Entry and a Savanna School District Report Card, which was found to be fraudulent. The applicant provided no explanation or supporting evidence in response to this finding. 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. 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 (BIA 1988).

The absence of sufficiently detailed supporting documentation and the existence of derogatory information that establishes the applicant used documents in a fraudulent manner and made material misrepresentations seriously undermine the credibility of the supporting documents, as well as the credibility of the applicant's claim of residence in this country for the requisite period. Pursuant to 8 C.F.R. § 245a.2(d)(3), 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 his burden of proof in establishing that he has resided in the United States since prior to January 1, 1982 to May 4, 1988 by a preponderance of the evidence as required under both 8 C.F.R. § 245a.2(d)(3) and *Matter of E- M-*, 20 I&N Dec. 77 (Comm. 1989).

Given the applicant's reliance upon supporting documents with minimal or no probative value or that have been found to be fraudulent, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through May 4,

1988 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.

By filing the instant application and submitting falsified documents, the applicant has sought to procure a benefit provided under the Act through fraud and willful misrepresentation of a material fact. Because the applicant has failed to provide independent and objective evidence to overcome, fully and persuasively, our finding that he submitted falsified documents, we affirm our finding of fraud.

ORDER:

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