



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED] Office: NEW YORK Date: FEB 22 2008
MSC-05-176-13541

IN RE: Applicant: [REDACTED]

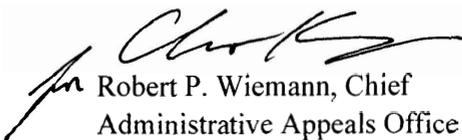
PETITION: Application for Status as a Temporary Resident pursuant to Section 245A of the
Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:

[REDACTED]

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, New York. 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 credibly established that he had continuously resided in the United States in an unlawful status for the duration of the requisite period.

On appeal, the applicant stated that the director erred because the CSS/Newman Settlement Agreements indicate no case should be denied for lack of documentation, and the director misapplied the “preponderance of the evidence” burden of proof.

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 meet his burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

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 March 25, 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] Lakewood, New Jersey from August 1981 to December 1987; and [REDACTED] West Hempstead, New York from January 1988 to September 1991. At part #31 where applicants were asked to list all affiliations or associations, clubs, organizations, churches, unions, businesses, et cetera, the applicant listed only Sikh Temples in Chantilly, Virginia from 1998 to present. At part #33 where applicants were asked to list all employment in the United States since entry, the applicant listed the following positions during the requisite period: Cleaner for Bayonne Hospital from November 1981 to December 1987; and self-employed painter from January 1988 to September 1991.

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 an undated affidavit from [REDACTED], which states that the applicant has been living in the United States continuously since 1981 except for brief visits abroad. This affidavit is undated and fails to include details regarding the circumstances in which the affiant met the applicant, their frequency of contact during the requisite period, and the locations whether the applicant resided in the United States 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 continuously throughout the requisite period.

The applicant provided an affidavit dated February 8, 2004 from [REDACTED] printed on letterhead from Guru Nanak Foundation of America, Inc., located in Silver Spring, Maryland. This affidavit states that the applicant has been living in the United States continuously since 1981 except for brief visits abroad. The affiant also stated that the applicant "come [sic] to the Gurdwara all the time." This affidavit is inconsistent with the applicant's Form I-687, where the applicant failed to list the Guru Nanak Foundation of America, Inc. when asked to list all affiliations or associations. In addition, the affidavit does not conform to regulatory standards for attestations by churches, unions, or other organizations as stated in 8 C.F.R. § 245a.2(d)(3)(v). Specifically, the affidavit is not signed by an official whose title is shown, does not show inclusive dates of membership, does not state the address where the applicant resided during the membership period, does not establish how the author knows the applicant, and does not establish the origin of the information being attested to.

The applicant submitted an affidavit dated February 17, 2005 from [REDACTED] [REDACTED] which states that the affiant has personal knowledge that the applicant was present in the United States prior to January 1, 1982 and from that date until at least May 4, 1988. The affiant stated that he obtained this knowledge because he and the applicant used to meet regularly on most Sundays at "sikh temple." This information is inconsistent with the applicant's Form I-687, where he failed to list any Sikh temple involvement prior to 1998, when asked to list all affiliations and associations. This inconsistency calls into question the affiant's ability to confirm that the applicant resided in the United States throughout the requisite period.

The applicant provided an affidavit from [REDACTED], which states that the affiant has personal knowledge that the applicant was physically present in the United States prior to January 1, 1982 and has been living in the United States continuously except for some brief visits abroad. The affiant stated that he is familiar about the applicant's whereabouts as they used to meet regularly on most Sundays at "Sikh Temple" and talk on a regular basis. This information is also inconsistent with the applicant's Form I-687, where he failed to list any Sikh temple involvement prior to 1998, when asked to list all affiliations and associations. This inconsistency calls into question the affiant's ability to confirm that the applicant resided in the United States throughout the requisite period. In addition, this affidavit fails to provide detail regarding when and in what circumstances the affiant first met the applicant, as well as the applicant's address 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 provided an affidavit from [REDACTED] which states that the affiant met the applicant at a Sikh temple in December 1982. The affiant also referenced contacts with the applicant in the United States in July 1983, August 1985, and in 1986. This affidavit is inconsistent with the information in the applicant's Form I-687 where the applicant failed to list any Sikh temples prior to 1998, when asked to list all affiliations or associations. This inconsistency calls into question the affiant's ability to confirm that the applicant resided in the United States throughout the requisite period.

The applicant provided additional evidence that was found to be fraudulent or altered in a notice of derogatory information issued to the applicant by the AAO on December 26, 2007. This notice provided the applicant with fifteen days in which to respond to the derogatory information. More than one month has passed since the notice was issued, yet the applicant has failed to respond to the notice. Therefore, the record will be considered complete.

The applicant submitted a photocopied mailing envelope purportedly postmarked in India on February 3, 1981. The original postmark date on this envelope appears to have been altered by hand in ink to read [REDACTED]. The envelope bears three Indian postage stamps. The envelope bears one postage stamp with a value of five rupees that depicts the image of a leopard cat, the legend, "Leopard Cat" on the bottom of the stamp, and the word "INDIA" in the upper right-hand corner of the stamp. As indicated in the notice of derogatory information, this stamp is listed at page 855 of Volume 3 of the *2007 Scott Standard Postage Stamp Catalogue* and is listed as catalogue number [REDACTED]. The catalogue lists the date of issue for this stamp as April 25, 2000.

The same envelope bears another postage stamp with a value of one rupee that depicts an image of [REDACTED] and a legend bearing his name on the right-hand edge of the stamp. As indicated in the notice of derogatory information, this stamp is listed at page 856 of Volume 3 of the *2007 Scott Standard Postage Stamp Catalogue* and is listed as catalogue number [REDACTED]. The catalogue lists the date of issue of this stamp as January 12, 2001.

The same envelope bears a third postage stamp with a value of 50 paises that depicts the image of a "Nilgiri tahr," a type of goat, and the name [REDACTED] along the left-hand side of the stamp. As indicated in the notice of derogatory information, this stamp is listed at page 855 of Volume 3 of the *2007 Scott Standard Postage Stamp Catalogue* and is listed as catalogue number [REDACTED]. The catalogue lists the date of issue of this stamp as April 25, 2000.

The applicant also submitted a letter dated May 16, 1989, from Bank Card Center, Norfolk, Virginia, regarding the applicant's Mastercard account. As indicated in the notice of derogatory information, this letter does not appear to be a genuine letter from a credit card company. The letter is signed above the words "Bank Card Center," rather than above the printed name of the

company representative who supposedly wrote the letter. It is standard business practice in the United States for company representatives to sign such correspondence under their own names, rather than under the names of the companies they represent. Furthermore, this letter is typed on plain paper rather than on company letterhead. Normally, a genuine letter from a credit card company would be written on company letterhead and the signature, name, and title of the company representative who wrote the letter would appear in the closing salutation.

The applicant also submitted a letter dated June 17, 1985 from [REDACTED], New Accounts Representative, Charge-It-System, located in North Suburban, Illinois. As indicated in the notice of derogatory information, this letter does not appear to be a genuine letter from Charge-It-System. There are irregularities in the text of the letter. In the fourth paragraph, the author of the letter stated, "We are truly soory [sic] that we cannot be of service to you at this time." The word "sorry" is misspelled as "soory" in this sentence.

The applicant provided an undated letter from [REDACTED], located at [REDACTED] Bayonne, New Jersey," stating that the applicant worked for [REDACTED] from November 1981 to December 1987 as a member of the cleaning crew. As indicated in the notice of derogatory information, this letter does not appear to be a genuine letter from Bayonne Hospital. This closing salutation reads, "Thank You, Bayonne Administrator" and is signed "Bayonne Hospital." CIS cannot verify the letter's contents because the author's name was not provided.

The applicant also included a letter dated April 4, 1984, from [REDACTED] Manager, Subscription Services, Hearst Magazines and an undated letter from [REDACTED] President of Pubali Travel & Tours, located at [REDACTED], Brooklyn, New York." As indicated in the notice of derogatory information, the Pubali Travel & Tours letter, the Hearst Magazines letter, and the Bayonne Hospital letter all appear to have been typed on the same typewriter using the same font. This strongly suggests that these letters were fraudulently created to appear to be documents created during the requisite period.

The notice of derogatory information indicated that the AAO had serious doubts regarding the authenticity of multiple documents submitted by the applicant. When given the opportunity, the applicant failed to provide any explanation or additional information in support of the authenticity of these documents. The applicant's failure to respond to the concerns raised by the AAO casts additional doubt on the credibility of the documents, and on the applicant's claim to have resided in the United States throughout the requisite period.

In denying the application, the director determined that the applicant had not credibly established that he had continuously resided in the United States in an unlawful status for the duration of the requisite period.

The fact that the applicant submitted letters that appear to be fraudulent, as well as a photocopy of a mailing envelope with an altered postmark and three stamps that were not issued until well

after the purported postmark date of February 3, 1981, establishes that the applicant utilized documents in a fraudulent manner and made material misrepresentations in an attempt to establish his residence in the United States during the requisite period. By engaging in such action, the applicant has seriously undermined the credibility of his claim of continuous residence in the United States during the requisite period.

In summary, the applicant has provided evidence of residence in the United States relating to the 1981-88 period that lacks sufficient detail, is inconsistent with the applicant's Form I-687, does not conform to regulatory standards, or has been found to be fraudulent. Specifically, the affidavits from [REDACTED] and [REDACTED] lack sufficient detail. The affidavit from [REDACTED] is inconsistent with the applicant's Form I-687 and does not conform to regulatory standards. The affidavits from [REDACTED] and [REDACTED] are inconsistent with the applicant's Form I-687. The photocopied mailing envelope and the letters from Bank Card Center, Charge-It-System, Bayonne Hospital, Hearst Magazines, and Pubali Travel & Tours have been 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, 591-92 (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 throughout the prescribed period 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 throughout the prescribed 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.

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.