



U.S. Citizenship  
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FILE: [REDACTED]  
MSC 05 230 12190

Office: NEW YORK

Date: JAN 30 2008

IN RE: Applicant: [REDACTED]

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.

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 noted that there were discrepancies between the applicant's testimony and the evidence of record and found that the applicant failed to establish her continuous unlawful residence from January 1, 1982 until December 1985. 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, the applicant provides additional documentation addressing the time period that was the focus of the director's adverse findings.

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. Section 245A(a)(3) of the Act, 8 U.S.C. § 1255a(a)(3).

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)(1), "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.

As the applicant provided evidence in the form of tax returns for years 1985-1988, the director focused specifically on the time period from January 1, 1982 until December 1985. However, the AAO notes that all four tax returns are dated stamped by the Internal Revenue Service (IRS) as having been received on November 27, 2002. Thus, as none of the tax returns were actually filed on their respective due dates, they fail to establish that the applicant was actually present and residing in the United States from 1986 through 1988. Accordingly, 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 full statutory time period. The following evidence was submitted in support of the applicant's claim:

1. Photocopied envelopes addressed to [REDACTED] with the following postmark dates: March 14, 1981, March 26, 1982, June 15, 1983, and December 3, 1984.
2. A photocopied purchase receipt dated February 18, 1983. The receipt is stamped with the vender's name and address, but contains no information about the purchaser. As this receipt cannot be linked to the applicant, it can be afforded no weight as evidence of the applicant's residence and presence in the United States for the requisite period.
3. Two photocopied, hand-written receipts issued by [REDACTED] and [REDACTED]. The receipts are dated February 12, 1981 and July 22, 1983.
4. Two photocopied, hand-written receipts issued by J&B Express to [REDACTED]. The receipts are dated June 2, 1982 and May 17, 1984.
5. A photocopied purchase receipt for a plane ticket issued to the applicant on December 29, 1987.

6. A photocopied letter on the letterhead of St. Anselm's Church dated April 20, 1990. The letter is signed by Pastor [REDACTED] who stated that the applicant has been attending the said church since 1985. Mr. [REDACTED] referred to the applicant by her maiden name, [REDACTED] and provided her residential address at [REDACTED]
7. An affidavit from [REDACTED] dated January 24, 1991, stating that she has known of the applicant's residence in the United States since 1980. The only verifiable information provided by the affiant was in regard to the applicant's December 1987 departure from and subsequent return to the United States. Although the affiant claimed to have known the applicant for approximately 11 years at the time she wrote the affidavit, she provided no further information that would lend credibility to an alleged 11-year relationship with the applicant. As such, the statement can be afforded minimal weight as evidence of the applicant's residence in the United States for the requisite period.
8. An affidavit dated January 24, 1991 from [REDACTED], owner of [REDACTED] stating that his company employed the applicant from 1986 to 1989. However, the affiant failed to specify whether or not the information was taken from official company records or provide the applicant's address at the time of employment, the exact period of employment, and the applicant's duties with the company, all of which are regulatory requirements for employment letters. *See* 8 C.F.R. § 245a.2(d)(3)(i). As such, this affidavit can be afforded minimal weight as evidence of the applicant's employment and residence in the United States during the requisite period.
9. A photocopied affidavit dated December 18, 1990 from [REDACTED] claiming that she is the owner of the apartment located at [REDACTED], which she claimed she rented to the applicant from December 1980 to June 1983. It is noted that the notary who verified the identity of the affiant indicated at the bottom of the document that the affidavit was sworn before him on January 22, 1990. The validity of the document is questionable, as the date provided by the affiant at the top of the document is 11 months subsequent to the date provided by the notary. It appears, therefore, that the notary may have signed a blank document and did not, in fact, witness the affiant's signature. Accordingly, this affidavit can be afforded minimal weight as evidence of the applicant's residence in the United States during the requisite period.
10. An undated letter from [REDACTED] claiming that the applicant worked for her from January 14, 1981 to June 1983. Although Ms. [REDACTED] vouched for the applicant's good character, she failed to provide the applicant's duties during the claimed employment nor did she specify whether or not the employment information was taken from official company records, both which are requirements listed in 8 C.F.R. § 245a.2(d)(3)(i). As such, this employment letter can be afforded minimal weight as evidence of the applicant's employment and residence in the United States during the requisite period.

On February 9, 2006, the director issued a notice informing the applicant of her intent to deny the application for temporary resident status. The director stated that insufficient documentation was submitted to support the applicant's claim. In response, the applicant submitted the following documents addressing the statutory time period:

1. An affidavit dated October 27, 2005 from [REDACTED] claiming that the applicant lived at the affiant's apartment at [REDACTED] from December 1980 until 1983. The affiant also claimed that the applicant cared for the affiant's children during that time.
2. An affidavit dated October 11, 2005 from [REDACTED], claiming to have known the applicant since 1986. The affiant claimed that she and the applicant were both members of the same club at San Anselmo Church. The affiant provided no further information that would lend credibility to an alleged 19-year relationship with the applicant. As such, the statement can be afforded minimal weight as evidence of the applicant's residence in the United States for the requisite period.
3. An affidavit dated October 12, 2005 from [REDACTED], both claiming to have known the affiant for 18 years, or since 1987. Mr. [REDACTED] claimed that his wife used to work with the applicant, but provided no information about the employer or dates of employment. Neither affiant provided further information that would lend credibility to an alleged 18-year relationship with the applicant. As such, the statement can be afforded minimal weight as evidence of the applicant's residence in the United States for the requisite period.
4. A notarized letter dated October 11, 2005 from the manager of Prospect Accounting Service claiming that the applicant has been a client of the company "since the late 1980's." As the actual date of the applicant's first use of the service was not provided, it is unclear whether this document addresses the statutorily relevant time period. Accordingly, this document can be afforded minimal weight as evidence of the applicant's residence in the United States for the requisite period.
5. A letter dated October 11, 2005 from Pastor A [REDACTED], who stated that the applicant has been a member of St. Anselm's Church since 1985.
6. A letter dated October 19, 2005 from [REDACTED], parish administrative assistant at the St. Anthony of Padua Church, stating that the applicant is an active member of the Catholic Church. [REDACTED] provided no basis for her claim as she did not clarify whether the applicant is a member of St. Anthony of Padua Church and if so, when the membership commenced.

Although the applicant also provided evidence to show that she filed tax returns for years 1986-1988, the IRS date stamps on the tax returns suggest all three tax returns were retroactively filed in 2002 and thus do not establish the applicant's residence in the United States during the those years.

On June 7, 2006, after reviewing the documentation submitted, the director determined that the applicant failed to provide sufficient evidence to support her claim. The applicant now appeals the director's decision and submits colored photocopies of the envelopes initially submitted in support of the application. Upon review of these documents, the AAO observed various anomalies that seriously compromise the credibility of the applicant's claim. The adverse findings pertain specifically to the envelopes postmarked March 14, 1981, March 26, 1982, and June 15, 1983, all three of which were discussed by the AAO in a letter sent December 13, 2007. Briefly, 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. The AAO further noted that all of the envelopes submitted to account for the applicant's residence at Intervale Avenue are missing the house or apartment number. 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 March 14, 1981, March 26, 1982, and June 15, 1983 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 his own credibility as well as the credibility of his 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 himself 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 December 13, 2007 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.

As a final note, in a more recent review of the record, the AAO further observed that all four envelopes, including the envelope postmarked December 14, 1984, which was not listed in the AAO's prior notice, are addressed to the applicant using her married name. However, the applicant's most recently submitted Form I-687 shows that the applicant did not get married until 1987. These significant anomalies strongly support the AAO's finding that these documents, and potentially others, are fraudulent.

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.

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