



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

**Identifying data deleted to
prevent clear, unwarranted
invasion of personal privacy**



L1

FILE:



Office: NEW YORK

Date: JUL 01 2008

MSC 05 330 11137

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 N. 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 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. On appeal, the applicant asserted that the director failed to adequately consider all of the evidence.

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 (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 record contains:

- a letter dated August 22, 1983 from [REDACTED], MD of New York, New York;
- a radiographic report dated December 24, 1981;
- a letter dated February 20, 1988 from an optician;
- A letter dated March 15, 1985 from the India Pavilion Restaurant in New York City;
- an affidavit dated November 29, 2005 from [REDACTED];
- a letter dated May 24, 1988 from a manager at El Inca Restaurant of Jackson Heights, New York;
- a letter dated March 15, 1983 from Acme Cleaners of Jersey City, New Jersey;
- a letter dated December 26, 1981 from the offices of *Popular Electronics* magazine;
- a September 20, 1986 letter from Regency Picture Frames, Inc., of Astoria, New York;
- a letter dated April 28, 1988 from [REDACTED];

- a letter dated September 30, 1982 from the New York Branch Office of Western Union; and
- leases dated August 1, 1982 and March 15, 1984.

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

The August 22, 1983 letter from [REDACTED] indicates that the applicant has been under her care since December 14, 1981.

The December 24, 1981 radiographic report is from a radiologist to [REDACTED] and is reporting the results of a radiographic examination of the applicant.

The February 20, 1988 letter indicates that the applicant had an eye examination at the optician's Flushing, New York location on that date.

The March 15, 1985 letter from the India Pavilion Restaurant states that the applicant worked as a dishwasher for that restaurant from April 1983 to March 1985.

In his November 29, 2005 affidavit, [REDACTED] stated that he has known the applicant and been in touch on a regular basis since meeting him in Queens, New York in 1981.

The May 24, 1988 letter from El Inca Restaurant is on what purports to be that restaurant's letterhead, and gives its address as "[REDACTED] [.] Jackson Heights, NY 11372." That letter states that the applicant worked as a dishwasher at that restaurant from September 1986 to May 1988 during which time he lived at "[REDACTED] Brooklyn, NY 11209."

This office notes that the letterhead contains an error in punctuation; that is, a comma follows the street number. The same error occurs in the applicant's address in the body of the letter. That, in itself, is no more than mildly suspicious, as it may merely indicate that the same person who typed the letter dictated the address for the letterhead, and the printer failed to correct it. Although that would be unusual, it is insufficient, in itself, to cast serious doubt on the legitimacy of the evidence submitted by the applicant.

This office further notes, however, that nearly all of the addresses on the Form I-687 application contain this same error. Almost all have a comma following their street numbers. This implies that the same person who designed the letterhead of the Inca Restaurant and typed the letter from the Inca Restaurant also prepared the applicant's Form I-687 application. Absent even a feasible explanation, this raises considerably more serious suspicions.

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 (Comm. 1988).

The letter from Acme Cleaners states that the applicant worked as a Helper-Cleaner for that company from December 1981 to March 1983. It states, "His address shown in our official records is [REDACTED] Astoria, NY 11102." This office notes that the applicant's address as shown on that letter contains the same error that is common to the Inca Restaurant letter and the Form I-687 application; that is, a comma after the street number. Further, where the "#" symbol in each of the addresses on both letters and on the Form I-687 application, it is both preceded and followed by a space. This additional error common to both letters and the Form I-687 application, ostensibly typed by various people during various years, absent even a feasible explanation, renders all of the applicant's evidence yet more suspect.

The December 26, 1981 letter that purports to be from *Popular Electronics* magazine is ostensibly their reply to an inquiry. Although that letter is addressed to the applicant, the salutation reads, "Dear Mr [REDACTED]."

The letterhead gives the offices of that company as "P.O. Box, Mt. Morris, IL, 61054-9932." This office notes that the box number in that address is missing, an error unlikely to occur on a company's letterhead. The letter is addressed to the applicant at, [REDACTED], Astoria, NY 11102." This office notes that this address, ostensibly typed by an employee of *Popular Electronics* magazine, who is apparently unknown to the applicant, his previous employers, and the person who prepared his Form I-687, again includes a comma after the street number and a space before and after the "#" sign. The applicant's evidence is rendered yet less credible.

The September 20, 1986 letter from Regency Picture Frames states that the applicant worked for them from June 1985 until September 1986 as a stock person. Regency Picture Frame's address as shown in its letterhead is "[REDACTED] Astoria, New York 11106. Yet again, this error, rare elsewhere, but common to so much of the documentation submitted, makes yet clearer that much of the evidence in this matter was fabricated by the same person.

In his April 28, 1988 letter [REDACTED] stated that he has known the applicant since 1986 and believes that the applicant entered the United States during late 1981. The declarant's address is given as "[REDACTED], Jackson Heights, N.Y." Again, a comma incorrectly follows the street number. Again, this common error in letters and other documents ostensibly prepared by various different people is uncommonly suspicious, and diminishes the credibility of all of the applicant's evidence yet further.

The December 30, 1982 letter from Western Union is addressed to the applicant at, [REDACTED] Astoria, NY 11102." Again, that address has the superfluous comma and the "#" symbol set off with a space on either side. Again, the reliability of the evidence submitted is further diminished.

The August 1, 1982 lease shows that the applicant rented [REDACTED] Astoria, NY 11102" from August 1, 1982 to July 31, 1983. The March 15, 1984 lease shows that the applicant

rented Bronx, New York from March 15, 1984 to March 14, 1985. The March 15, 1984 lease submitted shows that the applicant rented Bronx, New York, from March 15, 1984 to March 14, 1985.

This office notes that the August 1, 1982 lease contains the same error in spacing and error in punctuation as the various other documents discussed above. This detracts yet further from the evidentiary value of all of the documents presented by the applicant and from the reliability of the assertions made by him.

In a Notice of Intent to Deny (NOID), dated March 16, 2006, the director noted that El Inca Restaurant and Regency Picture Frames Inc. are not listed on the web site of the New York Department of State. The director further noted the incorrect salutation in the letter from *Popular Electronics* and stated that the letter appeared to have been altered. The director specifically requested the original of the December 26, 1981 *Popular Electronics* letter.

The director indicated that, given those additional facts, the applicant had failed to submit evidence demonstrating his entry into the United States prior to January 1, 1982. The director granted the applicant thirty days to submit additional evidence.

In response the applicant submitted an undated letter. In that letter the applicant stated that Regency Picture Frames and El Inca Restaurant existed when he worked for them, and that he is unable to explain why they are not listed on the New York Department of State web site.

The applicant further stated that no alteration had been made to the December 26, 1981 letter from *Popular Electronics*. The applicant did not, however, despite the direct request by the director, provide the original of that letter, from which CIS could readily have determined whether or not that evidence had been altered. The applicant did not explain that omission.

In the Notice of Decision, dated July 28, 2006, the director denied the application, finding that the applicant had failed to overcome the basis for denial stated in the NOID.

On appeal, the applicant stated, “[CIS] has failed to substantiate their allegations by clear, unequivocal, and convincing evidence, leaving the issue in doubt. The decision of the District Director is clearly an abuse of discretion.

On that appeal, the applicant’s address was given as “[REDACTED]” in Corona, New York. This office notes that the address has the same errors in punctuation common to almost all of the evidence in the record, indicating that the same person who fabricated the other evidence in the record prepared the applicant’s appeal.

In a brief that accompanied that appeal, the applicant argued that the evidence submitted demonstrates his eligibility. The applicant noted that the Internet did not exist prior to 1991 and stated that companies that ceased operations prior to that year would have no Internet presence. The

applicant challenged, "the unfair determination made by the finding of the District Director only because the companies could not be found on the computer web-site."

This office notes, initially, that the decision of the district director was not based solely on the absence from the Internet of the companies for which the applicant claims to have worked. Further, the decision was not based, even in part, on the absence of dedicated sites for the applicant's alleged former employers, or on the absence of those employers' names from the Internet in the abstract. Rather, it was based on the absence of those companies' names from the listings of corporations at the website maintained by the New York State Department of State Division of Corporations at http://appsext8.dos.state.ny.us/corp_public/corpsearch.entity_search_entry, a site that lists even those corporate entities that filed considerably prior to 1991 and corporations that are inactive.

On April 30, 2008 this office sent the applicant a notice of adverse evidence. That notice discussed the peculiar errors in punctuation described above and the implication that most of the evidence in the record was fraudulent. That notice further stated that, absent evidence to overcome the adverse evidence in the record, this office would find that the applicant had sought to obtain an immigration benefit through fraud and willful misrepresentation of a material fact, and that he is inadmissible pursuant to section 212(a)(6)(C) of the Act. This office also noted that, absent such satisfactory evidence, this office would refer the instant case for prosecution pursuant to 8 C.F.R. § 245a.2(t)(4). The applicant did not respond to that notice.

That notice also observed that, in a March 6, 2006 notice of intent to deny, the director indicated that the photocopy provided of the December 26, 1981 letter from *Popular Electronics* appears to have been altered, and requested the original of that letter, but that the original was not provided, nor was an explanation of that omission. That notice further observed that, pursuant to 8 C.F.R. § 103.2(b)(14), failure to submit requested evidence that precludes a material line of inquiry is, in itself, grounds for denying an application. This office accorded the applicant one additional opportunity to provide the requested original. As was noted above, the applicant did not respond to that notice.

One issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate entry into the United States prior to January 1, 1982, and continuous residence during the requisite period.

In fact, the website at http://appsext8.dos.state.ny.us/corp_public/corpsearch.entity_search_entry (Accessed June 3, 2008) reveals the existence of El Inca Peruvian Restaurant Bar Corporation. The address given at that site is the address for service of process on that company, and is not necessarily the business at which it does business.

Further, a google search reveals numerous references to El Inca Restaurant at 8503 Roosevelt Avenue in Jackson Heights, although it appears no longer to be at that location. The available evidence demonstrates the previous existence of El Inca Restaurant, though not necessarily that the applicant's employment verification letter from that restaurant is genuine.

As to Regency Picture Frames, Inc., however, the evidence is more incriminating. The letterhead purportedly from that company indicates that the name of the company is "REGENCY PICTURE FRAMES INC." That indicates that a corporation of that same name necessarily exists or existed. The New York Department of State web site indicates that it does not and did not. This casts considerable doubt on the legitimacy of the employment verification letter from Regency Picture Frames, and, pursuant to *Matter of Ho*, 19 I&N Dec. 582, on the legitimacy of the balance of the applicant's evidence and the veracity of all of his assertions.

Further, as was noted above, the instant Form I-687 application, the employment verification letters from El Inca Restaurant, Regency Picture Frames, and Acme Cleaners; the letter from *Popular Electronics* magazine; and the letters from [REDACTED] and Western Union all appear to have been produced by the same typist and appear, therefore, to be fraudulent.

The evidence must be evaluated not by the quantity of evidence alone but by its quality. 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. Given the paucity of credible supporting documentation he has failed to meet his burden of proof and failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through the date he attempted to file a Form I-687 application, as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M--*, *supra*. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act. The application was correctly denied on this basis, which has not been overcome on appeal.

In addition, the applicant will be denied based on the applicant's failure to provide the requested original of the December 26, 1981 letter from *Popular Electronics*. A decision on appeal shall be affirmed, notwithstanding that the decision from which the appeal was taken relied upon an incorrect basis or a wrong reason. *Securities and Exchange Commission v. Chenery*, 318 U.S. 80, 88 (1943) citing with approval *Helvering v. Gowran*, 302 U.S. 238, 245. "On appeal from or review of [a] decision, the agency [rendering the appeal or review] has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule. 5 U.S.C. § 557(b) *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a de novo basis). This office may therefore rely on any basis of ineligibility that appears in the record, even if it was not relied upon in rendering the decision denying the application.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial.

A further issue, however, is that of the applicant's inadmissibility pursuant to section 212(a)(6)(C) of the Act for submitting fraudulent documents in an attempt to obtain an immigration benefit. Based on the evidence described above, this office finds that the applicant did, in fact, submit such

documentation and thereby sought to obtain an immigration benefit through fraud and willful misrepresentation of a material fact. The applicant is therefore inadmissible pursuant to section 212(a)(6)(C) of the Act.

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