

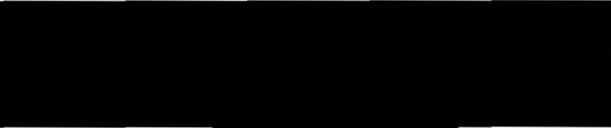


U.S. Citizenship  
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FILE: [REDACTED]  
MSC-05-231-15076

Office: LOS ANGELES

Date: **MAY 29 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. If your appeal was dismissed or rejected, all documents have been returned to the National Records 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. 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, California. 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 states that he entered the United States before January 1, 1982 and he has been residing continuously there in an unlawful status.

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 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 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.* 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 shows that the applicant submitted a Form I-687 Application and Supplement to Citizenship and Immigration Services (CIS) on May 19, 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 showed his first address in the United States to be at [REDACTED] Panorama City, California from March 1981 to June 1984, at [REDACTED], Panorama City, California from June 1984 to October 1988, and [REDACTED] Van Nuys, California from October 1988 to August 1992. Similarly, at part #33, he showed his first employment in the United States to be for Commodore Ind. Inc., [REDACTED] Panorama City, California from March 1981 to June 1987, and with Wilson Construction Company, [REDACTED] Santa Monica, California from June 1987 to December 1988.

In support of his claim, the applicant submitted his birth certificate and the following relevant evidence:

- Three (what appear to be partial) statements from Bednar Building Company, Calabasas, California, dated 11/20/1982, 11/25/1982 and January 13, 1983 with the applicant’s last name hand printed on them.
- A “Purchaser’s Copy” of an American Express money order dated March 6, 1983, with the applicant’s name hand printed on it.

- The applicant's California identification card dated October 10, 1984, and driver's license dated July 8, 1985.
- A card issued by [REDACTED]'s Fitness centers to the applicant marked as valid from December 16, 1987 to December 15, 1990.
- Three receipts from Porta Management Group date stamped July 9, 1984, October 4, 1984, November 5, 1984 concerning monthly rental charges.
- A check from the State of California dated May 23, 1985, payable to the applicant at his residence in Panorama city, California.
- A State of California, Department of Motor Vehicles certificate dated October 22, 1988, naming the applicant.
- Three pay statements dated September 23, 1988, September 29, 1988, and October 6, 1988, payable to [REDACTED], by a construction company (name partially deleted) located at Santa Monica, California.

The applicant submitted the following evidence of correspondence he sent to Mexico in 1981:

- A stamped envelope addressed to [REDACTED] Michoacan, Mexico, with a return address to [REDACTED] Van Nuys, California. The envelope carries a postage stamp cancellation dated March 11, 1981.
- A stamped envelope addressed to [REDACTED] Caploa, Michoacan, Mexico, with a return address to [REDACTED] Van Nuys, California. The envelope carries a postage stamp cancellation dated July 11, 1981.

In the Form I-687, part #30 mentioned above, the applicant listed his residence in the United States to be at [REDACTED] Panorama City, California from March 1981 to June 1984, therefore the applicant's return address on the above two envelopes is inconsistent with the residence he listed on his Form I-687.

Further, with reference to the mailed envelope above noted reputedly canceled on July 11, 1981, addressed to [REDACTED], Caploa, Michoacan, Mexico that envelope has pasted upon it a postage stamp issued by the United States Postal Service (USPS) stating a valuation of 50 cents and on its face is a commemorative stamp of Harriet Quimby, "Pioneer Pilot," issued April 27, 1991 according to United States Stamps-First Day Covers, Scott number C128. Since the stamp was issued by the USPS after the stamp's reputed cancellation date in 1981, the submission of this envelope to correlate the applicant's statements of residency in the United States during the requisite period is a fraudulent act by the applicant.

Likewise, with reference to the mailed envelope above noted reputedly canceled on March 11, 1981, addressed to [REDACTED], that envelope has pasted upon it a postage stamp issued by the United States Postal Service (USPS) stating a valuation of 45 cents and on its face is a commemorative stamp of Samuel P. Langley, "Aviation Pioneer," issued on May 14, 1988. Since the stamp was issued by the USPS after the stamp's reputed cancellation date in 1981, the submission of this envelope to correlate the applicant's statements of residency in the United States during the requisite period is a fraudulent act by the applicant.

Further, the applicant submitted the following evidence:

- A stamped envelope addressed to [REDACTED] Mexico, D.F., with a return address [REDACTED], Panorama City, California. The envelope carries a postage stamp cancellation dated August 6, 1981.
- A stamped envelope addressed to [REDACTED], Mexico, D.F., with a return address [REDACTED], Panorama City, California. The envelope carries a postage stamp cancellation dated July 11, 1981.
- A stamped envelope addressed to [REDACTED], Codigo Postal, Mexico, with a return address [REDACTED] Panorama City, California. The envelope carries a postage stamp cancellation dated November 11, 1981.

The number "eight" in the year of the reputed postmark on each envelope above noted appears to be over-written and not the original postal cancellation number.

The applicant also submitted postage cancelled air mail envelopes he sent to or received from recipients in Mexico in 1983, 1984, 1985, 1985, 1986, 1987, and 1988.

It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the application. *Id.* at 591.

On January 31, 2006, the director issued a request for additional evidence (Form I-72) to the applicant. Specifically the director requested that the applicant provide a statement from the Social Security Administration and evidence of residence in the United States for the period 1981 to 1988.

In response to the request the applicant submitted a statement of earnings from the Social Security Administration for the period 1988 to 1992, a printout from the State of California, Department of Motor Vehicles dated February 22, 2006, and evidence previously submitted.

The director denied the application for temporary residence on September 5, 2006. In denying the application, the director found that the applicant failed to meet his burden of proof by a

preponderance of the evidence presented that the applicant continuously resided in the United States for the requisite periods.

The fact that the applicant submitted postmarked envelopes reputedly mailed in 1981, when two of the envelopes had United States postage stamps that had not as yet been issued to the public until 1988 and 1991, demonstrates that the applicant utilized documents in a fraudulent manner and made material misrepresentations in an attempt to establish his residence within the United States for the requisite period. By engaging in such an action, he has seriously undermined his own credibility as well as the credibility of his claim of continuous residence in this country 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.

The AAO issued a notice to the applicant on April 21, 2008, informing him that it was the AAO's intent to dismiss the applicant's appeal based upon the fact that he had submitted fraudulent evidence and made material misrepresentations in an attempt to establish his residence within the United States for the requisite period and thus gain a benefit under the Act. The AAO further informed the applicant of the relevant ground of inadmissibility under section 212(a)(6)(C) and that, as a result of his actions, his appeal would be dismissed, a finding of fraud would be entered into the record, and the matter would be referred to the U.S. Attorney for possible prosecution. *See* 8 C.F.R. § 245a.2(t)(4).

The applicant was granted fifteen days to provide substantial evidence to overcome, fully and persuasively, these findings. The applicant has failed to submit any evidence addressing the fraudulent evidence that was found to undermine the basis of his claim of residence in the United States for the requisite period. As noted above, it is incumbent on the applicant to resolve inconsistencies by independent objective evidence. *Matter of Ho, supra*. The applicant has failed to provide any such evidence and has not overcome the basis for a finding of fraud.

If CIS fails to believe that a fact stated in the application is true, CIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001). Failure to submit requested evidence in response to the director's NOID that precludes a material line of inquiry shall be grounds for denying the application. 8 C.F.R. § 103.2(b)(14). The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). The burden of proof in these proceedings rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

In this case, there was submitted insufficient credible and probative evidence to corroborate the applicant's claim of continuous residence for the entire requisite period. The inconsistencies and contradictions noted in the record seriously detract from the credibility of the applicant's 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 his burden of proof in establishing by a preponderance of the evidence that he has resided in the United States for the requisite period, as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M-*, 20 I&N Dec. 77 (Comm. 1989). The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis.

In addition, as the record reflects that the applicant has made material misrepresentations to gain lawful status in the United States, the AAO finds that the applicant has sought to procure a benefit provided under the Act through fraud and willful misrepresentation of a material fact., a ground of inadmissibility under section 212(a)(6)(C) of the Act. Because the applicant has failed to provide independent and objective evidence to overcome this finding, fully and persuasively, the AAO affirms its finding of fraud. A finding of fraud is entered into the record, and the matter will be referred to the U.S. Attorney for possible prosecution, as provided in 8 C.F.R. § 245a.2(t)(4).

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