



U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

L1

FILE: [REDACTED]
MSC-05-242-10893

Office: NEWARK

Date: NOV 28 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:

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.

John F. Grissom, Acting 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 Director, Newark. 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, as there were discrepancies in the record. Therefore, the director determined the applicant was not eligible to adjust to temporary resident status pursuant to the CSS/Newman Settlement Agreements and denied the application.

On appeal, counsel for the applicant asserts that the discrepancies noted by the director are not significant and states that the applicant provided testimony at the time of his interview that was consistent with his Form I-687 application. The applicant also submits additional evidence in support of his application.

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 245(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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6).

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.

The issue in this proceeding is whether the applicant has established that he (1) entered the United States before January 1, 1982 and (2) has continuously resided in the United States in an unlawful status for the requisite period of time. The documentation that the applicant submits in support of his claim to have arrived in the United States before January 1982 and lived in an unlawful status during the requisite period consists of affidavits of relationship written by the applicant’s friends and family, and envelopes that indicate they were mailed to the applicant in the United States during the requisite period. Some of the evidence submitted indicates that the applicant resided in the United States after May 4, 1988; however, because evidence of residence after May 4, 1988 is not probative of residence during the requisite time period, it shall not be discussed. The AAO has reviewed each document in its entirety to determine the applicant’s eligibility; however, the AAO will not quote each witness statement in this decision.

The applicant’s Form I-687, submitted to United States Citizenship and Immigration Services (USCIS) on May 31, 2005 states that the applicant resided in the Bronx, New York from 1981 until 1982; in Woodside, New York from 1982 to 1986; and then in Englewood, New Jersey from 1986 to 1989. The applicant also stated that during the requisite period he was employed as a dishwasher at Araucarias Restaurant from October 1986 until June 1989 and that he worked as a bartender at Esmeralda Night Club Disco in New York. However, he did not provide dates that correspond with this employment.

The applicant submitted affidavits and declarations with his application.

Affiant [REDACTED] states that the applicant, who is her cousin, resided with her from September 1981 until December 1981. However, the affiant does not state that she knows that he resided in the United States subsequent to that time.

Affiant [REDACTED] states that the applicant was her tenant at [REDACTED] in Woodside, New York from January 1982 to November 1986. Notes on this affidavit indicate that at the time of an interview with an immigration officer, the applicant could not recall who this affiant was.

Affiant [REDACTED] states that he has known the applicant since 1986. He goes on to state that the applicant resided with him for several months in 1986. However, he does not provide the address associated with this residence.

Affiants [REDACTED] and [REDACTED] each state that they met the applicant on a date either in 1981 or in early 1982. However, none of these affiants state that they personally know if the applicant resided in the United States for part or all of the requisite period in their affidavits. Therefore, they can be accorded no weight as evidence that he did so.

Further, though affiant [REDACTED] states that she met the applicant in January 1982 while she was shopping, she does not state where she was shopping or indicate whether she first met the applicant in the United States. Notes taken at the time of the applicant's interview with a USCIS officer indicate that the applicant stated that he first met this affiant in Colombia because they are from the same city.

Affiants [REDACTED] and [REDACTED] both stated that they have known the applicant since December 1981 when they met the applicant at Christmas parties in New Jersey and New York respectively. Though [REDACTED] states that she has been friends with the applicant since she first met him, she does not state the frequency with which she saw the applicant during the requisite period nor does she indicate whether there were periods of time during that period when she did not see the applicant. Similarly, though [REDACTED] states that he worked with the applicant during the previous ten years, he fails to indicate the frequency with which he saw the applicant during the requisite period or indicate whether there were periods of time during that period when he did not see the applicant.

The record also contains an affidavit from [REDACTED], who states that she has known the applicant since December 1981 when she met him at a Christmas party in Englewood, New Jersey when he resided in New York. She states that she has kept in touch with the applicant since that time. However, the affiant fails to state the frequency with which she saw the applicant during the requisite period or to indicate whether there were periods of time during that period when she did not see the applicant. Further, the applicant previously submitted an affidavit from this affiant on which she stated that the applicant resided in New Jersey when she met him in 1981. This inconsistency casts doubt on assertions made by this affiant regarding the applicant's residence in the United States.

The applicant also submitted an affidavit in 1990 in which he states that he was employed at la Esmeralda night club in Jackson Heights, New York as a waiter from February 1982 until September 1986. He states

that he attempted to get a letter from this club, but that he was unable to do so because it has gone out of business.

The applicant also submits envelopes that indicate they were sent to the applicant at addresses in the United States during the requisite period. Details of those submitted that are relevant to the requisite period are as follows:

- Five envelopes bearing an airmail stamp in the amount of 60 Colombian pesos that shows the word “Colombia” and the name “[REDACTED] 1889-1976.” This stamp is featured on page 428 of Volume two of the *Scott Standard Postage Stamp Catalogue* and is listed as catalog number AP258. The catalog lists the issue date of this stamp as March 28, 1990. The postmark dates on these envelopes are: December 6, 1981; December 17, 1981; December 28, 1981; and two bearing the date May 28, 1982.
- Three envelopes bearing an airmail stamp in the amount of 150 Colombian pesos that shows the word, “Colombia” and the phrase, “Radio Nacional de Colombia 1940-1990.” This stamp is featured on page 428 of the *Scott Standard Postage Stamp Catalogue* and is listed as catalog number AP257. This catalog lists the issue date of this stamp as February 16, 1990. The postmark dates on the envelopes bearing this stamp are: February 9, 1983; May 12, 1987; and February 10, 1988.
- One envelope bearing a stamp in the amount of 70 Colombian pesos and features Christ on the cross. This stamp bears the words, “Senor de los Milagros de Buga.” This stamp is featured on page 404 of the *Scott Standard Postage Stamp Catalogue* and is listed as catalog number A478. This catalog lists the issue date of this stamp as September 28, 1990. The part mark date stamp that appears over the stamp on the envelope indicates the date February 10, 1988.
- Two envelopes bearing airmail stamps in the amount of 60 Colombian pesos that feature General Santander and the Constitution. These stamps bear the words “El General Santander con la Constitución: 1840 Sesquicentenario de la Muerte 1990.” A small font at the bottom of the stamp indicates they were issued in 1990. These stamps are featured on page 428 of the *Scott Standard Postage Stamp Catalogue* and are listed as catalog number C823. This catalog lists the issue date of these stamps as May 6, 1990. The post-mark dates appearing over these envelopes are: October 10, 1986; and November 10, 1986.
- One envelope bearing an airmail stamp in the amount of 150 Colombian pesos that features dolphins, and sea birds and the words, “El Medio Natural que Vieron los Descubridores.” This stamp is featured on page 429 of the *Scott Standard Postage Stamp Catalogue* and is listed as catalog number AP266. This catalog lists the issue date of the stamp as October 12, 1990. The post-mark date that appears over the stamp on this envelope is April 28, 1983.

- One envelope bearing an airmail stamp in the amount of 110 Colombian Pesos that features a yellow rose and two white daisies and other flora. This stamp is featured on page 428 of the *Scott Standard Postage Stamp Catalogue* and is listed as catalog number AP247. This catalog states that this stamp was issued as a pane of seven stamps featuring flora and fauna in 1989. The post-mark date that appears over this stamp is August 10, 1984.
- One envelope bearing a stamp in the amount of 60 Colombian pesos that features the Pasto Cathedral and the words, "Pasto 450 Años." This stamp is featured on page 404 of the *Scott Standard Postage Stamp Catalogue* and is listed as catalog number A453. This catalog lists the issue date of the stamp as May 20, 1988. The post-mark date that appears over this stamp is October 10, 1987.
- One envelope bearing a stamp in the amount of 70 Colombian pesos that features musical notes and pictures [REDACTED] and [REDACTED] i. This stamp is featured on page 404 of the *Scott Standard Postage Stamp Catalogue* and is listed as catalog number A451. Though the date 1987 is shown on the stamp, this catalog lists the issue date of the stamp as May 25, 1988. The post-mark date that appears over this stamp is October 14, 1984.

Each of the stamps on these envelopes was issued after the post-mark dates that appear over the stamps. This casts grave doubt on the credibility of these envelopes as evidence that the applicant resided in the United States during the requisite period. Further, because the applicant has submitted these envelopes, doubt is cast on the credibility of not only these documents, but on other documents he has submitted in support of his claim that he resided in the United States for the duration of the requisite period.

Doubt cast on any aspect of the applicant's proof may, of course, 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. 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).

Though the applicant submitted affidavits from individuals attesting to his residency in the United States during the requisite period, as was noted by the director, these affidavits contain testimony that is not consistent with the record regarding the applicant's residence during the requisite period. He has not submitted any evidence of his employment during the requisite period. More significantly, the applicant also submitted envelopes that bear postmark dates indicating they were mailed to the applicant during the requisite period. However, though they bear these postmark dates, as previously noted the stamps on these envelopes were issued after their post-mark dates. This casts grave doubt on the credibility of these documents.

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 his 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).

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 both the applicant and counsel on September 23, 2008, informing them 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 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. He failed to submit any evidence addressing the discrepancies and contradictions that were 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.

The absence of probative and credible documentation and the conflicting evidence and contradictory claims in the record 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 his 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 submitted contradictory applications and 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. 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.