



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

Office: NEW YORK

Date: JUL 30 2008

MSC-06-007-13223

IN RE:

Applicant:

[REDACTED]

PETITION:

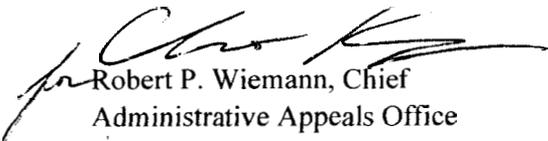
Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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.

Under the name of _____ on October 7, 2005 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, together comprising the I-687 Application. 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. Specifically, the director issued a Notice of Intent to Deny (NOID) on June 27, 2006, noting the following: (1) the applicant stated at his March 18, 2006 interview with U.S. Citizenship and Immigration Services (CIS) that he entered the United States in 1981 with his aunt _____, but furnished no evidence of such entry;¹ (2) he claimed that he resided unlawfully and maintained continuous physical presence in the United States for the requisite periods but submitted no evidence in support of his claim; (3) he submitted copies of his aunt's lease from 1981 to 1988 but did not submit evidence that his aunt was his legal custodian; and (4) he claimed that he attended grammar school in the United States but did not submit records to substantiate that claim. Based on these findings, the director denied the application on March 9, 2007, concluding 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.

The applicant filed a Notice of Appeal on March 25, 2007, along with several documents and a statement reiterating his claim that he entered the United States around July 31, 1980 at the age of three with his aunt, Ms. _____. He added that he arrived in New York City, where he resided with his aunt "since until" he was in high school. Upon review of the record, the AAO agrees with the director's conclusion that the applicant failed to provide sufficient evidence of residence for the duration of the requisite period and further finds that the documents he submitted, both on appeal and previously, are fraudulent for the reasons noted below.

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).

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) 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

¹ In the NOID, the director noted that the applicant had not submitted corroborative evidence that he entered "such as documents showing a valid entry to the United States at that time." The AAO notes that documents showing a lawful entry are not required.

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 (BIA 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, by a preponderance of the evidence, that his claim of continuous unlawful residence in the United States during the requisite period is probably true. Upon an examination of each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, the AAO finds that the applicant has failed to meet this burden.

A review of the record reveals the following inconsistencies and misrepresentations in documents that are relevant to the requisite period:

- Medical records: The record contains copies of two different "Lifetime Health Record" forms. The first is for "[REDACTED]" and lists the applicant's correct date of birth, February 28, 1977. The form also shows "[REDACTED]" as Parent/Guardian. It indicates that vaccines or screening tests were administered on various dates from March 1982 to November 1984. No address is given for the child or guardian, and there is no indication as to where the vaccines or screening tests were administered. Moreover, "[REDACTED]" is the name of the applicant's mother on his I-687 Application. The applicant never claimed to have been under

his mother's care in New York; rather, he claimed that he arrived in the United States as a child with his aunt, [REDACTED] and resided with her in New York. His aunt, not his mother, would have been his guardian during the years noted on the health record. The second form, submitted on appeal, is also a copy of a "Lifetime Health Record" for [REDACTED], with his date of birth. This form fails to note any parent/guardian and also lacks an address. It shows that vaccines were administered on various dates between August 1980 and July 1984. An uncertified copy was submitted for the first time on appeal. The AAO has concerns about the authenticity of these documents, as neither the director nor the AAO has had the opportunity to view originals; the applicant's address is not provided on either form; and no guardian is listed for a three-year-old child on the second form. Most revealing, however, is that all of the vaccination dates on the second form have been visibly altered from dates in 2000 (shown by "00") to dates in the 1980s, the first "0" in the 2000 date having been changed to "8" so that, for example, the date "8/15/00" has been changed to "8/15/80." Moreover, the form shows a print date of 9/98 and could not possibly have included contemporaneous records from the 1980s.

- School records: On appeal the applicant provided a certified copy of an unsigned letter from "Registrar" and copies of four "Junior School Report Cards" from "The United Nations International School." No address is included on the letterhead of these documents. Although they refer to [REDACTED] they do not provide any address for the applicant or for the school and can therefore not serve as evidence of the applicant's residence in the United States for the requisite period. Moreover, the Report Cards, for the years 1981 through 1984, indicate that the applicant would have been in the 5th through 8th grades during those years. This is not credible, as the applicant would have been only four years old in 1981. Although the Report Cards are certified copies of the documents, they do not include any indication that the originals were issued by the United Nations International School. The information provided, which is not credible, as well as the fact that neither the director nor the AAO has had the opportunity to view the originals, raise concerns as to the authenticity of the documents.

The applicant also provided on appeal an "Academic Transcript" from "Hunting High School," Long Island, New York, indicating that [REDACTED] was a student there from fall 1989 to March 18, 1993; along with a copy of a diploma showing that he graduated on March 18, 1993 from "Huntington High School." The information is not credible, as the applicant would have been only twelve years old and not of high school age in 1989, and the discrepancy in the name of the school indicates a lack of authenticity. Although not relevant as evidence of residence, as the dates of alleged school attendance fall outside the requisite period, these documents are further evidence of misrepresentation.

Lease Agreements: The applicant submitted two "Lease Agreement" forms, for January 1981 to December 1983 and for January 1984 to December 1988 respectively, claiming that they are in his aunt's name and that he resided with her at the address written on the forms, [REDACTED], New York. The space on the form for the landlord's name is left blank; the space for the tenant's name has two names that are not completely legible but that appear as "[REDACTED] . . ." The forms are not signed by any landlord or tenant, and they are therefore not valid rental agreements. Moreover, the full name of the applicant's aunt, [REDACTED] does not appear on the forms. These documents have no indicia of authenticity, are partially blank and illegible and, consequently, provide no evidence of the applicant's residence in the United States during the requisite period.

Although the applicant claims to have entered the United States at the age of three in the custody of his aunt, [REDACTED], to meet his burden of proof, he must provide evidence of eligibility apart from his own testimony. 8 C.F.R. § 245a.2(d)(6). He has provided neither credible school records nor medical records nor any other evidence of residence in the United States for any time during the requisite period. He also failed to provide any evidence from or about his aunt to indicate that she resided in the United States or that the applicant resided with her. He failed to provide any evidence from any responsible adult regarding the circumstances of his travel to New York as a child or how he survived in New York during his childhood and throughout the requisite period.

The documents described above have been determined to be fraudulent. Because the applicant submitted fraudulent documents, he has seriously undermined his 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 June 30, 2008, informing him that it was the AAO's intent to dismiss the applicant's appeal for the reasons noted above, that he had submitted fraudulent evidence and made material misrepresentations in an attempt to establish his residence in 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) of the Act 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. On July 15, 2008, the AAO received a statement from the applicant in response. He claimed that he had consulted a Chinese law firm in New York in 2005, and that the law firm had advised him to file the Form I-687 Application; that he was also advised at his CIS interview that he would need to show proof of his continuous residence in the United States since 1981; and that the law firm then let him know that they "will take care of the situation." He claimed that upon receipt of the June 30, 2008 letter from the AAO, he went back to the law office but that they had moved. He asked for copies of the supporting documents that had been submitted so that he could file a complaint with the "Immigrant Affairs Advisory Council." The AAO notes that no representative of any law firm signed any form submitted by the applicant, and the applicant himself signed all forms, including his Notice of Appeal, his accompanying brief and cover letters in which he referred to the supporting documents that he himself had submitted. Moreover, in his response to the AAO's letter, he failed to submit the original documents of the copies he had submitted or 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 by the AAO in its notice to the applicant on June 30, 2008, 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 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. 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 fraudulent documents 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, 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.