



U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED]  
MSC 04 324 10102

Office: NEWARK

Date: AUG 28 2007

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, Newark, New Jersey, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director determined that the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through the date that he attempted to file a Form I-687, Application for Status as a Temporary Resident, with the Immigration and Naturalization Service or the Service (now Citizenship and Immigration Services or CIS) in the original legalization application period between May 5, 1987 to May 4, 1988. The district director further determined that the applicant had not established that he was eligible for class membership pursuant to the CSS/Newman Settlement Agreements. Therefore, the district director concluded that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements and denied the application.

On appeal, the applicant reiterates his claim of residence in this country for the requisite period and states that he submitted sufficient evidence to support such claim.

The district director erred in denying the application because the applicant had not established that he was eligible for class membership pursuant to the CSS/Newman Settlement Agreements. If the district director believed that the applicant had not established that he was eligible for class membership pursuant to the CSS/Newman Settlement Agreements, she should have issued a notice of intent to deny the application explaining the perceived deficiency in the applicant's CSS/Newman Class Membership Application and providing the applicant thirty days to submit additional written evidence or information to remedy the perceived deficiency. In this case, the district director failed to issue a notice of intent to deny the applicant on this basis. Rather, the district director adjudicated the Form I-687 application on the merits, finding that the applicant had not established continuous unlawful residence in the United States during the requisite period. By adjudicating the application on the merits, the district director effectively found the applicant to be eligible for class membership. Therefore, the district director's finding that the applicant failed to establish that he was eligible for class membership pursuant to the CSS/Newman Settlement Agreements will be withdrawn and the appeal from the denial of the application based on the continuous residence issue will be adjudicated *de novo*.

An applicant for temporary residence 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).

An applicant applying for adjustment to temporary resident status must 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. § 1225a(a)(3).

For purposes of establishing residence and presence in accordance with the regulation at 8 C.F.R. § 245a.2(b), "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, consistent with the class member definitions set forth in the CSS/Newman Settlement Agreements. CSS Settlement Agreement, paragraph 11 at page 6; and Newman Settlement Agreement, paragraph 11 at page 10.

An alien applying for adjustment of status has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, 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. *See* 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 regulation at 8 C.F.R. § 245a.2(d)(3)(v) states that attestations by churches, unions, or other organizations to the applicant's residence by letter must: identify applicant by name; be signed by an official (whose title is shown); show inclusive dates of membership; state the address where applicant resided during membership period; include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; establish how the author knows the applicant; and, establish the origin of the information being attested to.

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 (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 establish continuous residence in the United States from prior to January 1, 1982 through the date he attempted to file a Form I-687 application with the Service in the original legalization application

period from May 5, 1987 to May 4, 1988. Here, the submitted evidence is not relevant, probative, and credible.

The record shows that the applicant submitted a Form I-687 application and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on August 19, 2004. At part #30 of the Form I-687 application where applicants are instructed to list all residences in the United States since first entry, the applicant indicated that he resided at "██████████" from 1981 to 1984 and at "██████████" from 1984 to April 1991.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant submitted an affidavit dated May 16, 2005, from ██████████ whose practice is located at "██████████", ██████████ stated that the applicant has been his patient since 1986. Since the applicant indicated on the Form I-687 that he lived in Miami, Florida, from 1981 to 1991, it is not credible that he would travel to Linden, New Jersey, whenever he needed medical attention.

The applicant also submitted an affidavit dated May 20, 2005, from ██████████, a resident of Revere, Massachusetts. ██████████ who explained that he worked as a taxi driver in Miami, Florida, from June 1985 to 2002, stated that he picked the applicant up in his cab in downtown Miami, Florida, on Christmas Eve, 1985, and they began a conversation. ██████████ further stated that the applicant told him he had been living in Miami since 1981 and working at home as a tailor. ██████████ indicated that he and the applicant exchanged phone numbers and subsequently became good friends. ██████████ stated that the applicant moved to New Jersey in 1990. Although ██████████ attested to the applicant's residence in this country since 1981, he failed to provide any relevant and verifiable testimony, such as the applicant's address(es) of residence in this country, to corroborate the applicant's claim of residence in the United States for the requisite period.

The applicant included an affidavit dated June 2, 2005, from ██████████, a resident of the Bronx, New York. ██████████, who indicated that the applicant is his nephew, stated that the applicant came to the United States in 1980 and had lived in this country since that time. However, ██████████ failed to provide any relevant and verifiable testimony, such as the applicant's address(es) of residence in this country or the frequency of his contact with the applicant, to corroborate the applicant's claim of residence in the United States for the requisite period.

The applicant also included an affidavit dated June 1, 2005, from ██████████, a resident of Bedminster, New Jersey. ██████████, who indicated that the applicant is his "real brother," stated that the applicant came to the United States in 1980 to seek employment opportunities in the United States. Although ██████████ attested to the applicant's residence in this country since 1981, he failed to provide any relevant and verifiable testimony, such as the applicant's address(es) of residence in this country, to corroborate the applicant's claim of residence in the United States for the requisite period.

The applicant provided an affidavit dated May 13, 2005, from ██████████, a resident of North Brunswick, New Jersey. ██████████ stated that she had known the applicant since June 1986 and they were in frequent contact until 1998. She explained that she and the applicant shared rooms in the same

apartment for a few years. [REDACTED] attested that the applicant was continuously physically present in the United States from June 1986 to October 1995, when he went home to Pakistan for a four-week visit. However, [REDACTED] did not provide the address of the apartment she shared with the applicant.

The applicant also provided an affidavit dated May 26, 2005, from [REDACTED] a resident of Watchung, [REDACTED] stated, "I first met [REDACTED] in the early 1980's. We have since become close personal friends, traveling together and dating. We have considered marriage but due to circumstances remain the best of friends." [REDACTED] attested that the applicant had resided continuously in the United States since 1980, "leaving just a few times for travel." Although [REDACTED] attested to the applicant's residence in this country since 1980, she failed to provide any relevant and verifiable testimony, such as the applicant's address(es) of residence in this country, to corroborate the applicant's claim of residence in the United States for the requisite period.

The applicant submitted an affidavit dated May 22, 2005, from [REDACTED] a resident of [REDACTED] New Jersey. [REDACTED] stated that he met the applicant in 1980 in Florida. [REDACTED] further stated that the applicant went to Pakistan for 30 days in 1982 and was continuously present in the United States from 1982 through 1995, when he went to Pakistan for about a month. However, [REDACTED] failed to provide any relevant and verifiable testimony, such as the applicant's address(es) of residence in United States to corroborate his claim.

The applicant also submitted an affidavit dated April 19, 2002, from [REDACTED] stated that he had known the applicant since 1980. [REDACTED] stated that the applicant asked him to help him find work, but he was unable to help the applicant because the applicant was not legally authorized to work in the United States. [REDACTED] stated that he and the applicant have been in contact since 1980. However, [REDACTED] did not provide any relevant and verifiable testimony, such as the applicant's address(es) of residence in the United States to corroborate his claim. Nor did Mr. [REDACTED] provide any information as to how he met the applicant or the frequency of his contact with the applicant.

The applicant submitted an original repair tag from [REDACTED], located at [REDACTED] [REDACTED]' This document indicates that the applicant left a camera to be repaired at that store on May 6, 1984.

The applicant also submitted an affidavit dated August 12, 2004, from [REDACTED] a resident of Scotch Plains, New York. [REDACTED] stated that he "knows that [REDACTED] has been living in the United States since 1980." However, [REDACTED] did not provide any information regarding how he knew the applicant, the frequency of his contact with the applicant, or any other relevant and verifiable testimony, such as the applicant's addresses in the United States during the requisite period to corroborate the applicant's claim.

The applicant included an affidavit dated August 14, 2004, from [REDACTED] a resident of Bridgewater, New Jersey. [REDACTED] stated that he and the applicant's had been friends since 1982. However, [REDACTED] did not provide any information regarding how he knew the applicant, the frequency of his contact with the applicant, or any other relevant and verifiable

testimony, such as the applicant's addresses in the United States during the requisite period to corroborate the applicant's claim.

The applicant submitted three original mailing envelopes postmarked in Pakistan on August 26, 1980, June 18, 1985, and September 23, 1989. The envelope postmarked August 26, 1980 bears a postage stamp with a value of two rupees that bears the image of apples and the legend "Fruits of Pakistan" at the top of the stamp and "Apple" in the lower left corner. This stamp is listed at page 24 of Volume 5 of the *2007 Scott Standard Postage Stamp Catalogue* and is listed as catalogue number [REDACTED]. The catalog lists the date of issue for this stamp as May 8, 1997. This envelope also bears a postage stamp with a value of three rupees that bears the image of [REDACTED]. This stamp is listed at page 19 of the *2007 Scott Standard Postage Stamp Catalogue* and is listed as catalogue number [REDACTED]. The catalog lists the date of issue for this stamp as August 14, 1989. The envelope has a third postage stamp with a value of two rupees that bears an image of [REDACTED]. This stamp is listed at page 25 of Volume 5 of the *2007 Scott Standard Postage Stamp Catalogue* and is listed as catalogue number [REDACTED]. The catalog indicates that this stamp was part of a series of stamps issued between 1998 and 2001. The postmark date on this stamp appears to have been altered by hand in ink.

The postmark date on the envelope postmarked June 18, 1985, also appears to have been altered by hand in ink.

The envelope postmarked September 23, 1989, bears a postage stamp with a value of 12 rupees that contains an engraving of [REDACTED]. This stamp is listed at page 22 of Volume 5 of the *2007 Scott Standard Postage Stamp Catalogue* and is listed as catalogue number [REDACTED]. The catalog lists the date of issue for this stamp as September 11, 1994. The postmark date on this stamp appears to have been altered by hand in ink.

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 above derogatory information indicates that you have misrepresented the date that you first arrived in the United States and thus casts doubt on your eligibility for temporary resident status.

The fact the envelopes postmarked August 26, 1980 and September 23, 1989 bear stamps that were not issued until well after the dates of these postmarks, along with the fact that all three postmarks appear to have been altered by hand in ink, establish 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 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 June 13, 2007, informing him that it was the AAO's intent to dismiss his appeal based upon the fact that he utilized the postmarked envelopes cited above in a fraudulent manner and made material misrepresentations in an attempt to establish his residence within the United States for the requisite period. The AAO further informed the applicant that he was inadmissible to the United States under section 212(a)(6)(C) of the Act as a result of his actions. The applicant was granted fifteen days to provide substantial evidence to overcome, fully and persuasively, these findings.

On June 23, 2007, the applicant's new attorney, [REDACTED] sent a letter to the AAO requesting that he be granted additional time to provide the requested rebuttal evidence. Counsel was granted until July 13, 2007, to submit evidence to rebut the adverse information in the notice of intent to make a finding of fraud. However, as of the date of this decision, counsel has failed to submit a statement, brief, or evidence addressing the adverse information relating to the applicant's 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.

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 his burden of proof in establishing that he has resided in the United States since prior to January 1, 1982 to May 4, 1988 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).

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 his burden of proof in establishing that he has resided in the United States since prior to

January 1, 1982 to May 4, 1988 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 he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through May 4, 1988 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.

In addition, the fact 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 rendered him inadmissible to this country pursuant to section 212(a)(6)(C) of the Act. By filing the instant application and submitting falsified documents, 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, fully and persuasively, our finding that he submitted falsified documents, we affirm our finding of fraud. The applicant failed to establish that he is admissible to the United States as required by 8 C.F.R. § 245a.2(d)(5). Consequently, the applicant is ineligible to adjust to temporary residence under section 245A of the Act on this basis as well.

**ORDER:**

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