



U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE:

[Redacted]
MSC 05 285 14162

Office: NEW YORK

Date: **SEP 28 2007**

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:

[Redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case 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, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director determined 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 of May 5, 1987 to May 4, 1988. Therefore, the district director determined 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, counsel submits a statement and copies of documents previously submitted in response to the notice of intent to deny.

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 (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. § 1255a(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; 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 “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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he resided 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 of 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 July 12, 2005. 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 “[redacted] New York, New York” from October 1983 to March 1986 and at “[redacted] New York, New York” from March 1986 to August 2001. The applicant did not list any residences in the United States prior to October 1983. At part #33, where applicants are instructed to list all employment in the United States since initial entry, the applicant indicated that he worked for Mach Transmission, Inc., located at “[redacted] Long Island City, New York,” as a mechanic helper from June 1983 to May 1986 and for Exaltacion Auto Repair, located at “[redacted] Long Island City, New York,” from March 1987 to December 1993.

At his interview with a CIS officer on March 8, 2006, the applicant stated that he first entered the United States in February 1981 at the age of 17 or 18. The applicant further stated that when he first came to New York, he roomed with six other individuals in Brooklyn, New York, for approximately two years and then lived in an apartment in New York, New York, with two couples and two other single people from 1983 to 1986.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant submitted an employment affidavit dated June 29, 2005, from [REDACTED] of Mach Transmission Inc., located at "[REDACTED] e, Long Island City, New York." [REDACTED] stated that the applicant worked for his company as a mechanic helper from June 1983 to May 1986.

Pursuant to 8 C.F.R. § 245a.2(d)(3)(i), letters from employers should be on letterhead stationery, if the employer has such stationery, and must include: (A) the alien's address at the time of employment; (B) the exact period of employment; (C) periods of layoff if any; (D) duties with the company; (E) whether or not the information was taken from official company records; and (F) where records are located and whether CIS may have access to the records. The letter from [REDACTED] does not conform to this standard. He did not provide the applicant's address during the employment period.

The applicant also provided an employment affidavit dated June 20, 2005, from [REDACTED] of Exaltacion Auto Repair, located at "[REDACTED] Long Island City, New York." [REDACTED] Nisthau stated that the applicant worked for his company as a mechanic helper from 1987 to 1993. The employment letter from [REDACTED] does not meet the employment letter standard set forth above. [REDACTED] did not provide the applicant's addresses in the United States during his period of employment for Exaltacion Auto Repair.

The applicant included an affidavit dated June 21, 2005, from [REDACTED]. [REDACTED] stated that the applicant resided at "[REDACTED], New York, New York" from October 1983 to March 1986. However, [REDACTED] did not provide any information regarding how she met the applicant, the frequency of her contact with the applicant, or how she can attest to the applicant's residence at that address from October 1983 to March 1986.

The applicant also included an affidavit dated March 4, 2006, from [REDACTED]. [REDACTED] stated that the applicant shared an apartment with him located at [REDACTED] Brooklyn, New York" from February 1981 to October 1983. The applicant did not list this address on his Form I-687. He did not list any addresses in the United States prior to October 1983.

The applicant provided an affidavit dated June 20, 2005, from [REDACTED] owner of [REDACTED] Transmission, located at "36-15 Vernon Boulevard, Long Island, City, New York." [REDACTED] stated that the applicant worked for his firm as a transmission mechanic helper from March 10, 1981 to May 25, 1983. This employment affidavit does not conform to the standard set forth at 8

C.F.R. § 245a.2(d)(3)(i). [REDACTED] did not provide the applicant's addresses during his employment for Dakar Transmission.

On March 14, 2006, the district director issued a notice informing the applicant of her intention to deny his Form I-687 application because he had not provided sufficient evidence to corroborate his claim of continuous residence in the United States during the requisite period.

The applicant, in response, submitted an affidavit dated April 3, 2006, from [REDACTED]. [REDACTED] stated that he had known the applicant since July 1981, when he met the applicant at a barbecue at a friend's house. Although [REDACTED] attested to the applicant's residence in the United States since 1981, he did not provide any relevant and specific detailed information such as the applicant's addresses in the United States during the requisite period to corroborate the applicant's claim. He failed to state how he dates his initial meeting with the applicant and the frequency of their contact.

The applicant also submitted an affidavit dated April 3, 2006, from [REDACTED]. [REDACTED] stated that he had known the applicant since August 1981 when they played on the same football team. Although [REDACTED] attested to the applicant's residence in the United States since August 1981, he did not provide any relevant and specific detailed information such as the applicant's addresses in the United States during the requisite period to corroborate the applicant's claim. He failed to state how he dates his initial meeting with the applicant and the frequency of their contact.

The applicant included an affidavit dated March 31, 2006, from [REDACTED]. [REDACTED] stated that he had known the applicant since 1987. [REDACTED] stated that he met the applicant at a park located at [REDACTED] and [REDACTED], New York, New York, when they were both playing volleyball. [REDACTED] stated that the applicant and his wife used to visit him at his old apartment located at "[REDACTED] New York, New York." However, [REDACTED] failed to provide any relevant and specific information such as the applicant's addresses in the United States during the requisite period to corroborate the applicant's claim. He failed to state how he dates his initial meeting with the applicant and the frequency of their contact.

The applicant also included a second affidavit dated April 1, 2006, from [REDACTED]. [REDACTED] stated that he had known the applicant since February 1981. [REDACTED] explained that he and the applicant shared an apartment located at [REDACTED], Brooklyn, New York" from February 1981 to December 31, 1983. This statement contradicts [REDACTED] statement in his first affidavit dated March 16, 2006, that he shared this apartment with the applicant from February 1981 to October 1983. [REDACTED] did not provide any explanation for this contradiction in the dates he claims he and the applicant shared this apartment.

[REDACTED] provided a photocopy of an apartment lease indicating that landlord [REDACTED] was leasing an apartment located at [REDACTED], Brooklyn, New York" to tenant [REDACTED] beginning on January 1, 1981 and ending on December 31, 1982.

However, there is a copyright mark in the upper right corner indicating that the lease form was copyrighted in 2004 by Bloomberg Excelsior, Inc. This lease is clearly not an original lease executed in 1981 since the lease form itself was not copyrighted until 2004.

The applicant provided an affidavit dated March 16, 2006 from [REDACTED] owner of Cash R Plus, located at [REDACTED] New York, New York. [REDACTED] stated that the applicant had been a customer in his store since October 1981. [REDACTED] explained that his store is small and he interacts personally with his customers at the register. However, [REDACTED] did not provide any relevant and specific verifiable information such as the applicant's addresses in the United States during the requisite period to corroborate the applicant's claim. Furthermore, [REDACTED] failed to state how he dates his initial meeting with the applicant and the frequency of their contact.

The district director denied the application on May 22, 2006, because the applicant failed to establish continuous residence in the United States during the requisite period. The district director noted in the denial decision that the apartment lease form signed by [REDACTED] had a copyright date of 2004 and could not possibly be an original apartment lease dating to the period from January 1, 1981 to December 31 1982, a fact which made it appear that the lease was deceitfully created or obtained in an attempt to establish the applicant's continuous residence in the United States during the requisite period.

On appeal, counsel states:

On the decision letter they state that we filed a [sic] affidavit from [REDACTED] that state he lived with the alien from February 1981 to December 31, 198 and that there is a lease that has a copyright stamp of 2004. However, we did sent [sic] [REDACTED] statement that says they shared an apartment from February 1981 to December 31, 1983. Also note that was not a lease from [REDACTED]

[REDACTED] is identified as the landlord and [REDACTED] is listed as the tenant on the lease. Although the applicant's name does not appear on the lease, [REDACTED] has twice stated in his affidavits that the applicant shared the apartment located at "[REDACTED] Brooklyn, New York" from February 1981 to 1983. This lease document cannot be an original lease from 1981 since the lease form itself was copyrighted in 2004. It appears that this lease is a fraudulent lease created in an attempt to corroborate the applicant's claim of residence in the United States during the period from February 1981 to December 31, 1982.

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, it is incumbent on 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 lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582. (Comm. 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 applicant submitted a fraudulent document and made material misrepresentations in an attempt to establish his eligibility for temporary resident status. 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 attempting to obtain an immigration benefit through the use of fraud and willful misrepresentation of a material fact.

The AAO issued a notice to the applicant on August 14, 2007, informing him that it was the AAO's intent to dismiss his appeal based upon the fact that he utilized the lease document cited above in a fraudulent manner and made material misrepresentations in an attempt to establish his residence in the United States during 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. However, as of the date of this decision the applicant 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 submitted a fraudulent lease document 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 a lease document 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 a falsified document, 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.