



U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

FILE:

[REDACTED]

Office: TEXAS SERVICE CENTER

Date:

APR 17 2008

SRC 02 149 52475

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. All documents have 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 initially approved. Pursuant to further review, the Director, Texas Service Center, terminated the applicant's temporary resident status. This matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director terminated the applicant's temporary resident status based on two grounds: 1) 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; and 2) the applicant submitted fraudulent documents in response to the notice of intent to deny issued in connection with a Form I-485 application he previously filed under provisions of the Legal Immigration Family Equity (LIFE) Act.

On appeal, counsel asserts that the director's decision was arbitrary, capricious, and unreasonable.

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). 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).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and presence in accordance with the regulation at 8 C.F.R. § 245a.2(b)(1), "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 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).

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, 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 or terminate the applicant's status if the application was already approved.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he resided in the United States during the requisite time period. Here, the applicant has not met this burden.

The record shows that two Form I-687s were completed by the applicant. The first application was completed in 1989 and the second was completed and accepted for filing on April 15, 2002. The record also shows that on August 16, 2001 the applicant filed a Form I-485 application under provisions of the LIFE Act. Documents submitted to support the claims made in these applications include the following:

1. A temporary permit issued on September 24, 1987 by the Texas Department of Public Safety. The permit lists a Houston, Texas address for the applicant. It is noted that the applicant never claimed to have resided in the State of Texas. As such, it is unclear why a Houston, Texas address is shown as belonging to the applicant in 1987 when he claimed to have resided in the State of New York during this time period.
2. A letter dated May 11, 2000 from [REDACTED] M.D., who claimed that the applicant was seen in his office on July 13, 1987 and on April 27, 1988. However, this individual gave no indication as to how this information was obtained. As such, this letter can be afforded minimal weight as evidence of the applicant's residence in the United States during the statutory time period.
3. An undated letter from the director of Elmhurst Muslim Society, Inc., stating that the applicant has attended Friday religious services at this congregation since 1981. Although the applicant's most recent residential address is provided, the letter does not mention the applicant's residential address during the statutorily relevant time period. More importantly, the applicant did not list his affiliation with this organization on either of his Form I-687 applications even though No. 34 of the application specifically asks for this relevant information. Accordingly, based on these various shortcomings, this letter can be afforded minimal weight as evidence of the applicant's residence in the United States during the statutory period.
4. An employment affidavit dated January 30, 2001 from [REDACTED] who claimed that the applicant worked for him at [REDACTED] Appliance and Discount Center from September 1981 to March 1987. However, [REDACTED]'s affidavit is not in compliance with the regulatory requirements cited in 8 C.F.R. § 245a.2(d)(3)(i), which requires that the employer provide the applicant's address at the time of employment, state whether or

not the information was taken from official company records, and indicate where records are located and whether the Service may have access to them.

5. An affidavit dated January 30, 2001 from [REDACTED]. Although the affiant claimed to have known the applicant since 1981, she provided no details about the circumstances and events of the applicant's life during the statutory time period. As such, the affiant's statement lacks any details that would lend credibility to an alleged 20-year relationship with the applicant and can be afforded minimal weight as evidence of the applicant's residence in the United States for the duration of the requisite period.
6. Affidavits from [REDACTED], and [REDACTED]. The three affidavits are similar in their content in that all three affiants claimed to have shared a residence with the applicant during various years that fall within the statutory period. However, all three affidavits are deficient in their lack of detailed information and at least two of the affidavits are in conflict with the first Form I-687 submitted by the applicant. Specifically, [REDACTED], whose affidavit is dated January 30, 2001, stated that he had known the applicant since 1981 and had shared an apartment with the applicant from 1981 to 1985. This information is inconsistent with No. 33 of the first Form I-687, where the applicant claimed to have continuously resided at the same residence from December 1981 to October 1987. [REDACTED], whose affidavit is dated August 13, 2001, claimed that the applicant shared an apartment with him at [REDACTED] St. from October 1987 to March 1993, a claim that is also inconsistent with No. 33 of the first Form I-687, which indicates that the applicant resided at [REDACTED] New York, New York during that time period. The only statement that is consistent with both of the applicant's Form I-687s is that of [REDACTED] whose affidavit is dated August 13, 2001. However, the only information provided by this affiant is the address of the residence he claimed to have shared with the applicant and the general dates of their cohabitation. Thus, despite its consistency with the applicant's statement, this affidavit lacks any details to lend credibility to the affiant's alleged 20-year relationship with the applicant and can be afforded minimal weight as evidence of the applicant's residence in the United States for the duration of the requisite period. Similarly, based on the inconsistencies noted above, the statements of [REDACTED] and [REDACTED] can also be afforded only minimal evidentiary weight.
7. An employment letter dated August 9, 1988 signed by [REDACTED], the manager of Rex Cinema. [REDACTED] stated that the applicant was employed by this establishment on a part-time basis from December 1985 to July 1988. This employment letter also falls short of the regulatory requirements cited in 8 C.F.R. § 245a.2(d)(3)(i) in that it fails to provide the applicant's address at the time of employment, does not state whether or not the information was taken from official company records, and does not indicate where records are located and whether the Service may have access to them.
8. A photocopied purchase receipt issued by Eastern Euro 220 on April 27, 1988. This document can be afforded minimal evidentiary weight as there is no indication that it belongs to the applicant.

Additionally, in response to the notice of intent to deny issued in connection with the applicant's Form I-485, the applicant submitted copies of receipts from Wyckoff Heights Medical Center and New York Telephone. As properly noted by the director in the subsequent denial of the Form I-485, this document was submitted

with portions missing and clearly appears to have been altered, particularly in light of the date that appeared at the upper right hand corner of the document suggesting that services were rendered on March 8, 1984, and the issue date of the form at the lower left hand corner, which indicates that this version of the form was issued in February 1993, nearly nine years after the purported date of service. A photocopied receipt dated November 28, 1988 from New York Telephone was also found to be altered. Specifically, this photocopy was also submitted with missing portions, thus compromising the validity of the actual document, whose original version was not provided.

The significant adverse findings discussed above contributed to the director's denial of the applicant's Form I-485 and subsequently formed the basis for the notice of intent to terminate, issued on August 27, 2007.

In response, counsel submitted a letter dated September 12, 2007 asserting that the documentation previously provided by the applicant is sufficient to establish his unlawful residence during the requisite period. In addition to the resubmitted documents, the applicant provided his own statement, which included an account of his departures from and returns to the United States. This account was intended to reconcile information and submissions that the director previously deemed to be inconsistent with the applicant's claimed continuous residence. However, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The applicant also denied any wrong-doing with regard to the receipts that the director previously found to be fraudulent. However, the applicant failed to provide the original versions of either receipt in order to establish the authenticity of either document.

Lastl the applicant asserted that CIS should have verified the employment information provided by \_\_\_\_\_ as well as the statements of \_\_\_\_\_ and \_\_\_\_\_ which addressed the issue of the applicant's residence. However, with regard to the employment letter, \_\_\_\_\_ statement is inconsistent with the information provided by the applicant in his Form I-687s, neither of which lists employment for \_\_\_\_\_ in any capacity. In general, counsel's statements, particularly in light of the director's prior finding of fraud, are without merit, as all of the supporting evidence submitted by the applicant is now deemed suspect.

The director determined that the applicant's response failed to overcome the adverse findings. Accordingly, in a notice dated September 28, 2007, the director terminated the applicant's temporary resident status.

**On appeal, counsel challenges the propriety of the director's decision.** However, the only document submitted in support of his argument that the decision is erroneous is a statement that is virtually identical in its content to the statement provided by the applicant in response to the notice of intent to terminate. As such, the AAO has addressed counsel's points and need not duplicate its response at this time.

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 under any visa classification, immigrant or nonimmigrant pursuant to section 212(a)(6)(C) of the Act by committing acts constituting fraud and willful misrepresentation.

In general, the absence of sufficiently detailed supporting documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of this 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. Given the applicant's contradictory statements on his applications and his reliance upon documents with minimal 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 the date he attempted to file a Form I-687 application 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, 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, the director's finding that he submitted falsified documents, we affirm the prior 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 for temporary resident status under section 245A of the Act on this basis as well.

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