



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

Office: PHILADELPHIA

Date: APR 17 2008

MSC-05-287-11011

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. If your appeal was dismissed or rejected, all documents have been returned to the National Records 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.


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, Philadelphia. 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 met his burden of proving by a preponderance of the evidence that he 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 under this section. Specifically, the director indicated that the applicant had submitted fraudulent evidence and identified an inconsistency related to a document submitted by the applicant.

On appeal, the applicant provided an affidavit, which attempted to explain the inconsistency identified by the director and explain the document that was identified as fraudulent.

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 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.* 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 continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on July 14, 2006. At part #30 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the applicant listed the following addresses during the requisite period: [REDACTED] New York, New York from November 1981 to December 1987; and [REDACTED], Brooklyn, New York from February 1988 to January 1990. At part #31 where applicants were asked to list all affiliations or associations, clubs, organizations, churches, unions, businesses, et cetera, the applicant listed nothing. At part #32 where applicants were asked to list all absences from the United States since entry, the applicant listed only a trip to Pakistan to visit family from January to February 1988 during the requisite period.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided voluminous documentation. Documents relating to the requisite period include a copy of a lease and multiple attestations. The applicant submitted a copy of a form lease agreement dated November 1, 1981 for a three-year term. The lease agreement lists the applicant as tenant of [REDACTED], New York, New York. The signature page of the document indicates that the landlord signed the document on November 1, 1981. The signature page also

includes a pre-printed component, which states, "EPA and HUD Lead Paint Regulations, Effective September 6, 1996." The fact that information about a regulation that became effective in 1996 was printed on a lease agreement form alleged to have been signed in 1981 casts serious doubt on the authenticity of the lease agreement and, as a result, on the applicant's claim to have resided in the United States during the requisite period.

The applicant provided an affidavit from [REDACTED] which states that the affiant has known the applicant since 1982. This affidavit fails to specifically state that the applicant resided in the United States during the requisite period.

The applicant provided an affidavit from [REDACTED] dated November 30, 2005, which states that the affiant has known the applicant for 20 years. The affiant stated that the applicant left the United States one time to visit Pakistan from January to February 1988. This affidavit does not specifically state that the applicant resided in the United States during requisite period, except for the time immediately surrounding the period from January to February 1988. In addition, this affidavit fails to provide detail regarding how the applicant met the applicant, their frequency of contact, and the region where the applicant resided in the United States during the requisite period. As a result, this affidavit is found to lack sufficient detail to confirm that the applicant resided in the United States during the requisite period.

The applicant submitted an affidavit from [REDACTED] dated December 29, 2005, which states that the affiant has known the applicant since his arrival in the United States in 1981. The affiant and the applicant met each other at Makki Mosque in Brooklyn, New York for Friday prayer in 1982 and have been friends ever since. This affidavit also fails to specifically state that the applicant resided in the United States during the requisite period.

The applicant submitted an affidavit from [REDACTED] dated July 5, 2005. This affidavit states that the affiant has known the applicant for 20 years and that the affiant knows from personal knowledge that the applicant has resided in the United States since 1981. This affidavit fails to include detail regarding how the affiant met the applicant, their frequency of contact, and the region where the applicant resided during the requisite period. As a result, this affidavit is found to lack sufficient detail to confirm that the applicant resided in the United States during the requisite period.

The applicant submitted an undated declaration from [REDACTED], secretary for the Muslim Community Center of Brooklyn, Inc. (Center). The declaration states that the applicant has been participating in Friday congregations in the Center since 1982. This document is inconsistent with the information provided on the applicant's Form I-687, where he failed to indicate that he attended the Center, when asked to list all affiliations or associations. In addition, since this declaration is undated, it fails to specifically state that the applicant resided in the United States at any time other than in 1982. Lastly, the declaration does not conform to regulatory standards for attestations by churches, unions, or other organizations as stated in 8 C.F.R. § 245a.2(d)(3)(v). Specifically, the declaration does not show inclusive dates of membership, does not state the address where the

applicant resided during the membership period, does not establish how the author knows the applicant, and does not establish the origin of the information being attested to.

In denying the application the director noted that the applicant had not met his burden of proving by a preponderance of the evidence that he 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 under this section. Specifically, the director indicated that the applicant had submitted fraudulent evidence by providing the lease agreement dated 1981 but containing a pre-printed component relating to regulations that became effective in 1996. The director also identified an inconsistency related to the letter dated June 15, 1988 and signed by [REDACTED]. As this document relates to a doctor visit alleged to have occurred outside the requisite period, the document is not relevant to the determination of whether the applicant resided in the United States throughout the requisite period. If the director erred in raising the issue of the inconsistencies relating to the letter from [REDACTED], this error is found to be harmless. The director's error is harmless because the AAO conducts a *de novo* review, evaluating the sufficiency of the evidence in the record according to its probative value and credibility as required by the regulation at 8 C.F.R. § 245a.2(d)(6). The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

On appeal, the applicant provided an affidavit, which attempted to explain the lease agreement he had submitted that was identified by the director as fraudulent. The applicant stated that he submitted a "representation of a lease from 1981." He stated that he lost the original lease document a long time ago, and that "[n]o one would keep such a document for over twenty-five years." The applicant stated that this lease "was obviously a sample of the lease that I originally submitted. I am not stupid. I knew that the lease that I submitted said 'EPA and HUD Lead Paint Regulations, Effective September 6, 1996.' If I was trying to do fraud like the USCIS says, I would not be that stupid to make a mistake like that." The applicant also stated that he was not questioned about the lease agreement during his interview with an immigration officer on August 11, 2006. The applicant indicated that if he had been questioned about the document in his interview he would have provided an explanation at that time. The applicant also stated that, other than the fact that it was a sample of the original, the lease he submitted was entirely correct because the applicant had found the original landlord and had the landlord sign the lease. Considering that the applicant failed to identify the lease agreement as a "representation" of the original upon submitting it as evidence, the applicant's explanation is found to be unreasonable under the circumstances.

The applicant failed to provide any additional evidence on appeal to overcome the determination that he had submitted fraudulent evidence. 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. 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 (BIA 1988).

In summary, the applicant has not provided any credible contemporaneous evidence of residence in the United States relating to the requisite period; has submitted a document determined to be fraudulent; and has submitted attestations that fail to state that the applicant resided in the United States during the requisite period, lack sufficient detail, or do not conform to regulatory standards. The affidavits from [REDACTED] and [REDACTED] fail to specifically state that the applicant resided in the United States during the requisite period. The affidavits from [REDACTED] and [REDACTED] lack sufficient detail. The declaration from [REDACTED] does not conform to regulatory standards.

The absence of sufficiently detailed supporting documentation and the existence of derogatory information that establishes the applicant used a document in a fraudulent manner seriously undermine the credibility of the supporting documents, as well as the credibility of the applicant's claim of residence in this country for the requisite period. Pursuant to 8 C.F.R. § 245a.2(d)(3), 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)(3) and *Matter of E-M-*, 20 I&N Dec. 77 (Comm. 1989).

Given the applicant's reliance upon supporting documents with minimal or no probative value or that have been found to be fraudulent, 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.

By filing the instant application and submitting a falsified document, the applicant has sought to procure a benefit provided under the Act through fraud. Because the applicant has failed to provide independent and objective evidence to overcome, fully and persuasively, the director's finding that he submitted fraudulent evidence, we affirm the director's finding of fraud.

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