



U.S. Citizenship
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Services

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[REDACTED]

FILE: [REDACTED]
MSC-05-350-12479

Office: NEW YORK Date: APR 17 2008

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. 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 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. The director denied the application, finding 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 director specifically mentioned an attempt to contact one of the applicant's affiants, who had no recollection of the applicant. The director also referred to inconsistencies between the applicant's Form I-687 and an earlier application submitted by him.

On appeal, the applicant submitted copies of documents confirming the existence of an employer for whom the applicant claimed to have worked. The applicant also attempted to explain the apparent inconsistencies in his applications. Specifically, the applicant attributed statements on a prior application to attorney errors. Lastly, the applicant provided documents that he had already submitted.

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)(1).

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)(1) 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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he resided in the United States for the duration of the requisite period. Here, the submitted evidence is not relevant, probative, and credible.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on September 15, 2005. 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] Teaneck, New Jersey from July 1981 to April 1985; and [REDACTED] Sunnyside, New York from May 1985 to April 1989. At part #32 where applicants were asked to list all absences from the United States since entry, during the requisite period the applicant listed only a trip to India to see his mother from September to October 1986. At part #33 where applicants were asked to list all employment in the United States since entry, the applicant listed the following positions during the requisite period: construction worker for Hossain Contracting Company, Brooklyn, New York at [REDACTED] in Teaneck, New Jersey from July 1981 to April 1985;

and construction worker for Style Painting & Home Improvement, Inc. in Brooklyn, New York from May 1985 to April 1989.

The record also includes a Form ETA 750 Application for Alien Employment Certification, Part B. Statement of Qualifications of Alien (Form 750B), signed by the applicant on April 27, 2001. At part #15 where the applicant was asked to list all jobs held within the past three years and other jobs related to the occupation for which certification was sought, the applicant listed the following positions: Air conditioner technician for the Royal Embassy of Saudi Arabia [identified elsewhere on Form 750B to be located in Kuwait] from March 1986 to April 1987; air conditioner and refrigeration mechanic for Ocean Electro Mechanical Air Conditioning and Refrigeration Engineers, Saudi Arabia from April 1987 to March 1990; and air conditioner technician for [REDACTED] Air Conditioning Works, Kuwait, Saudi Arabia from April 1996 to April 1998. This information is inconsistent with the applicant's Form I-687, where he indicated that he was working for Style Painting and Home Improvement in the United States from May 1985 to April 1989, rather than for two employers in Saudi Arabia and Kuwait from March 1986 to March 1990 as indicated on Form 750B. This information is also inconsistent with the applicant's claim to have resided continuously in the United States throughout the requisite period and, as a result, casts serious doubt on the applicant's claim.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided multiple attestations. The applicant provided an affidavit from [REDACTED] dated April 14, 2005. This affidavit states that the applicant worked for [REDACTED] constricting Company, Brooklyn, New York . . . between October July [sic] 1981 to April 1985." A header is printed on the page, listing the affiant's name and listing the address [REDACTED] Teaneck, New Jersey. This affidavit also states that the applicant resided at the employer's dormitory when he was employed there. Lastly, the affiant stated that he provided this information based on his memory, upon the applicant's request. The misspelling of a word, "contracting" in this case, by an individual whose business name includes this word casts some doubt on the credibility of this document. In addition, the inclusion of the word "October" prior to the date July 1981 indicates the information in this affidavit may be inconsistent with the applicant's Form I-687 application, where he indicated he began working for [REDACTED] in July 1981. Finally, the record indicates an immigration officer attempted to contact the affiant on March 28, 2006, and that the affiant indicated he has no recollection of the applicant. This casts serious doubt on the credibility of the affidavit and, as a result, calls into question the applicant's claim to have resided in the United States during the requisite period.

The record also includes a declaration dated March 31, 1990 from [REDACTED] proprietor of Ocean Electro Mechanical in Bombay. This declaration states that the applicant was employed with Ocean Electro Mechanical for the last three years. This indicates the applicant worked for this employer from approximately April 1, 1987 to March 31, 1990. This information is inconsistent with the applicant's Form I-687, where he indicated he was employed by Style Painting and Home Improvement, Inc. in the United States from May 1985 to April 1989. It is noted that the

information provided in this declaration appears to be consistent with relevant information provided on the applicant's Form 750B.

The applicant provided an affidavit from [REDACTED], President of Style Painting and Home Improvement, Inc., dated April 14, 2005. In this affidavit, the affiant stated that the applicant used to work for the affiant's construction company from May 1985 to April 1989 and is personally known to the affiant since 1985. The affidavit also states that the applicant lived at the [REDACTED] address while he worked for the affiant. This affidavit does not conform to regulatory standards for letters from employers as stated in 8 C.F.R. § 245a.2(d)(3)(i). Specifically, the affidavit does not indicate whether or not the information was taken from official company records, where the records are located, and whether the service may have access to the records. In addition, this affidavit is inconsistent with the affidavit from [REDACTED], which indicates the applicant began working for Ocean Electro Mechanical, a Bombay company, in April 1987. Therefore, this affidavit will be given very little weight.

In denying the application the director noted 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. The director specifically mentioned an attempt to contact [REDACTED] who had no recollection of the applicant. The director also referred to inconsistencies between the applicant's Form I-687 and the Form 750B.

On appeal, the applicant submitted copies of documents confirming the existence of an employer for whom the applicant claimed to have worked. The applicant also attempted to explain the apparent inconsistencies in his applications. Specifically, the applicant attributed statements on a prior application to attorney errors. The applicant stated that the information on the Form 750B regarding his employment was mishandled by his attorney's office. As examples, the applicant stated that the Form 750B mentioned Kuwait as a city in Saudi Arabia, although Kuwait is actually a country; that the form fails to indicate in which country the Royal of Embassy of Saudi Arabia was located; and that the Form 750B indicates that Ocean Electro Mechanical is in Saudi Arabia, although it is actually in India. This explanation is not found to be sufficient to overcome the inconsistencies between the information on the Form 750B and the applicant's Form I-687, for the three reasons explained below.

First, the record contains an additional document that supports the statement of the applicant's employment history that appears on the Form 750B. Specifically, the declaration from [REDACTED] indicates the applicant was working for Ocean Electro Mechanical, a Bombay company, from approximately April 1987 to March 1990. This is consistent with the information provided on Form 750B. However, in the explanation provided on appeal the applicant stated that he "worked for Ocean Electro Mechanical . . . from May 1989 to 1992." The applicant provided no explanation for the fact that the declaration from [REDACTED] confirms the account appearing on Form 750B rather than the applicant's more recent account of his employment history. This further calls into question the applicant's claim to have resided in the United States continuously throughout the requisite period.

Second, although the applicant indicated misstatements on the Form 750B resulted from attorney error, the Form 750B appears to have been signed by the applicant himself. In his appeal, the applicant failed to indicate that he did not, in fact, sign the Form 750B. The applicant failed to explain his willingness to sign the Form 750B although it contained misstatements regarding his employment history.

Lastly, any appeal or motion based upon a claim of ineffective assistance of counsel requires: (1) that the claim be supported by an affidavit of the allegedly aggrieved applicant setting forth in detail the agreement that was entered into with counsel with respect to the actions to be taken and what representations counsel did or did not make to the respondent in this regard, (2) that counsel whose integrity or competence is being impugned be informed of the allegations leveled against him and be given an opportunity to respond, and (3) that the appeal or motion reflect whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of counsel's ethical or legal responsibilities, and if not, why not. *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988). The applicant failed to support his claim of counsel error by meeting the above requirements. Therefore, the applicant's explanation of counsel error has been found to be insufficient to overcome the inconsistencies between the Form 750B and the applicant's I-687.

It is also noted that the applicant failed to specifically respond to the director's mention of the attempt to contact [REDACTED]. The applicant's failure to provide any explanation of [REDACTED]'s statement that he could not recall the applicant casts doubt on both the credibility of [REDACTED]'s attestation and the applicant's claim to have resided in the United States continuously throughout the requisite period.

On March 5, 2008, the AAO issued a notice to the applicant to inform him of the above outlined derogatory information and provide the applicant with an opportunity to respond before the final decision was rendered. The applicant provided two responses to the notice.

In his first response, dated March 15, 2008, the applicant stated that the statement on his Form 750B regarding his position with the Royal Embassy of Saudi Arabia in Kuwait was an error. The applicant also resubmitted a certificate of employment, with English translation, that had already been submitted in connection with the Labor Certification Application filed on behalf of the applicant. The certificate of employment indicates that the applicant worked for the Royal Embassy of Saudi Arabia in Kuwait from 1996 through 1998. This statement is inconsistent with the information provided on the Form 750B in two places. First, the applicant indicated on the Form 750B that he was employed with Alawdi Air Conditioning Works, rather than Royal Embassy of Saudi Arabia in Kuwait, from 1996 to 1998. Second, the applicant indicated that he was employed by the Royal Embassy of Saudi Arabia in Kuwait from March 1986 to April 1987, rather than from 1996 to 1998. The applicant's explanation is found to be unsatisfactory. Specifically, the applicant failed to provide any reasonable explanation of the fact that some of the supporting letters submitted with his Form 750B confirm the account of his employment

history listed on the Form 750B, while others confirm the applicant's current account of his employment history. The applicant failed to provide independent objective evidence to explain each of the inconsistencies between the Form 750A account and the applicant's claim to have resided in the United States throughout the requisite period, as described in the notice issued on March 5, 2008.

In his second response, dated March 18, 2008, the applicant reiterated his allegation that his counsel had mishandled the applicant's information. The applicant stated that he had not seen the Form 750 application before it was sent to the Department of Labor, and that one of his "sponsored friends" signed the Form 750 on the applicant's behalf. The applicant stated that this is why "the whole situation was out of [his] control." This explanation is found not to be reasonable under the circumstances. Specifically, the applicant has failed to indicate that the other individual signed the Form 750B without the applicant's permission, and he has failed to provide any independent, objective evidence that the Form 750B was signed without his permission. Instead, the applicant indicated that another person had signed "on [his] behalf." In addition, the applicant was informed of the discrepancies between the information on his Form 750B and his claim to have resided in the United States throughout the requisite period both in the NOID and in the director's decision. The applicant failed to indicate that another individual had signed the Form 750B on the applicant's behalf in his responses to the NOID and the director's decision and in his first response to the March 5, 2008 notice from the AAO. The failure of the applicant to provide this explanation when first confronted with the discrepancies casts serious doubt on the credibility of the explanation. Therefore, the applicant is still found to be responsible for the content of the Form 750B.

The applicant stated that the information provided in his Form I-687 is correct to the best of his knowledge, and that he did not try to get an immigration benefit by providing false information. The applicant indicated that he had spoken to [REDACTED] of Ocean Electro Mechanical, and [REDACTED] asserted that he does not mean the exact three years preceding 1990, but rather "any three years before 1990," which was before the applicant came to the United States. This explanation is found not to be reasonable under the circumstances. Mr. [REDACTED] stated in the letter he provided that the applicant had been working with Ocean Electro Mechanical "since last three years [sic]." The explanation alleged by the applicant to have been provided by Mr. [REDACTED] is found to be irreconcilable with the actual language used in the letter. It is unreasonable that [REDACTED] would use the statement "since last three years" to describe employment occurring during any prior three year period. In addition, the applicant failed to provide any independent objective evidence to overcome the inconsistencies related to Mr. [REDACTED]'s letter, including a written statement from [REDACTED] or another company official explaining the error in the prior letter and precisely stating the applicant's dates of employment with the company.

The applicant also attempted to explain the errors appearing in the letter from [REDACTED]. Regarding the use of the word "constricting" in [REDACTED]'s letter, the applicant failed to explain the use of this word. Instead, the applicant referred to prior documentation he

had submitted that confirmed the existence of the company, "[REDACTED] Contracting Co. LTD." The misspelling of the company's name in a letter prepared by [REDACTED]n, an official of the company, casts serious doubt on the credibility of the letter. The applicant failed to provide any explanation, or independent objective evidence, to overcome this doubt.

The applicant stated that the appearance of the word "October" immediately prior to "July" in the letter from [REDACTED]n was nothing but a typing error, and that on the applicant's Form I-687 the word was clearly written as "July" rather than "October." The applicant also attempted to explain [REDACTED]'s failure to recollect the applicant when he was contacted by an immigration officer. The applicant stated that he met with [REDACTED] in April 2005 to get his work records, and that [REDACTED] initially failed to remember the applicant. Later, Mr. Hossain recollected the applicant and provided him with an affidavit based on [REDACTED]'s recollection. The applicant also stated that [REDACTED] provided a photocopy of his passport to the applicant that is now part of the record, and that [REDACTED] knows the applicant personally but may not have recollected the applicant during the telephone call with the immigration officer. Again, the applicant failed to support his explanation of the errors appearing in [REDACTED] letter and [REDACTED]'s failure to recollect the applicant when contacted by the immigration officer by providing independent, objective evidence.

Lastly, the applicant referred to the letter regarding his employment with Style Painting and Home Improvement, Inc. As stated above, the credibility of this letter was called into question because the letter did not conform to regulations and was inconsistent with other information provided by the applicant. The applicant stated that [REDACTED], the author of the letter, does not have an official record of the applicant's employment because of his illegal status at the time of employment. Again, the applicant failed to support his explanation by providing independent, objective evidence.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the requisite period, has submitted attestations from only two people concerning his residence in the United States during that period, and has failed to provide sufficient evidence or explanation to overcome inconsistencies between his applications and other documents. The affidavit from [REDACTED] lacks credibility due to a failed attempt to confirm its content by speaking with the affiant, as well as the presence of spelling and other errors in the affidavit. The affidavit from [REDACTED]n does not conform to regulatory standards and is inconsistent with another affidavit in the record. In addition, the record contains an application and other documents submitted on the applicant's behalf that conflict with his claim of continuous residence in the United States throughout the requisite period. As a result, the applicant has been found to have used documents in a fraudulent manner and made material representations.

The applicant provided no supporting evidence to overcome this finding. 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).

The absence of sufficiently detailed supporting documentation and the existence of derogatory information that establishes the applicant used documents in a fraudulent manner and made material misrepresentations 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 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.

ORDER:

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