



U.S. Citizenship
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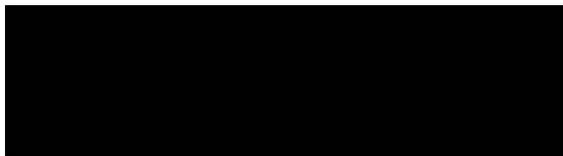
FILE: [REDACTED] Office: NEWARK
MSC 04 359 11996

Date: **AUG 04 2008**

IN RE: Applicant: [REDACTED]

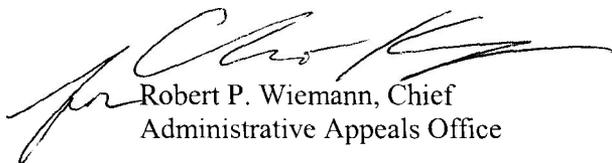
APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the
Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:



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 Benefits 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, 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. 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 section 245A of the Immigration and Nationality Act (Act) and denied the application.

On appeal, the applicant claimed that typographical errors were made in the preparation of a previously submitted Form I-589, Request for Asylum in the United States, which resulted in the mistaken perception he had been in India in 1988 rather than 1989. The applicant asserted that he has provided sufficient evidence including postmarked envelopes and affidavits to support his claim that he resided in the United States since prior to January 1, 1982.

An alien applying for adjustment to temporary resident status must establish that he or she entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through the date the application is filed. Section 245A(a)(2)(A) of the Act, 8 U.S.C. § 1255a(a)(2)(A), and 8 C.F.R. § 245a.2(b).

An alien 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 and 8 C.F.R. § 245a.2(b)(1).

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. *See* Paragraph 11, page 6 of the CSS Settlement Agreement and paragraph 11, page 10 of the Newman Settlement Agreement.

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. 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 including affidavits 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)(i) states that letters from employers attesting to an applicant's employment must: provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's duties; declare whether the information was taken from company records; and, identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

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 meet his or her 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 a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on September 23, 2004.

In support of his claim of continuous residence in the United States from prior to January 1, 1982, the applicant submitted a photocopied employment letter containing the letterhead of York Waterproofing Corp., in New York, New York that is signed by [REDACTED]. Mr. [REDACTED] stated that the applicant worked as a helper at this company from August 1981 to March 1986. However,

failed to provide either the applicant's address of residence during his employment with York Waterproofing Corp., or pertinent information relating to the availability of company records as required by 8 C.F.R. § 245a.2(d)(3)(i). Further, [REDACTED] failed to attest to the applicant's residence in this country after March of 1986.

The applicant included a photocopied employment letter containing the letterhead of ASA Waterproofing Corp., in Brooklyn, New York that is signed by [REDACTED]. Mr. [REDACTED] declared that the applicant worked as a helper/laborer at this enterprise from April 1986 to February 1989. Nevertheless, Mr. [REDACTED] failed to provide either the applicant's address of residence during his employment with ASA Waterproofing Corp., or pertinent information relating to the availability of company records as required by 8 C.F.R. § 245a.2(d)(3)(i). In addition, Mr. [REDACTED] failed to attest to the applicant's residence in this country from prior to January 1, 1982 up through April of 1986.

The record shows that the applicant made a prior claim to membership in a legalization class-action lawsuit and as such was permitted to previously file another separate Form I-687 application on or about October 25, 1991. With this Form I-687 application, the applicant included the originals of the two photocopied employment letters discussed in the paragraphs above as well as additional documentation in support of his claim of residence in this country for the requisite period.

The applicant submitted a declaration signed by Inderjit Singh who stated that he was a friend of the applicant and had personal knowledge that the applicant resided at [REDACTED] in Leonia, New Jersey from June 1981 to January 1982. However, Mr. [REDACTED] failed to provide any testimony relating to the applicant's residence in the United States after January of 1982.

The applicant provided a declaration that is signed by [REDACTED]. Mr. [REDACTED] declared that he was a friend of the applicant and they had both lived together at [REDACTED] in Mahwah, New Jersey from February 1982 to October 1985. Nevertheless, Mr. [REDACTED] failed to attest to the applicant's residence in the United States in the periods from prior to January 1982 up through February 1982 and after October 1985 through the end of the requisite period.

The applicant included a declaration signed by [REDACTED] who noted that he was a friend of the applicant and they had resided together at [REDACTED] in Mahwah, New Jersey from October 1, 1985 to November 15, 1988. Regardless, [REDACTED] failed to provide any testimony relating to the applicant's residence in this country from prior to January 1, 1982 up through October 1, 1985.

The applicant submitted four original envelopes that are postmarked May 1, 1981, June 10, 1981, March 16, 1982, and October 2, 1985, respectively. These envelopes bear Indian postage stamps and were purportedly mailed from India to the applicant at addresses that he claimed as residences in this country.

A review of the record reveals that the applicant previously submitted a Form I-589, Request for Asylum in the United States, to the Service on March 9, 1994. At part #12 of the Form I-589 asylum application, the applicant testified that he arrived in the United States at Los Angeles,

California in November 1990. Further, at part #20 of the Form I-589 asylum application the applicant testified that he joined the Manjit faction of the All India Sikh Students Federation (AISSF-M) during a religious function at the Gurudwara Sahib Fateh Garh [a complex of Sikh Temples in India] in April 1988. Additionally, at part #24 of the Form I-589 asylum application where applicants were asked if they had traveled to the United States before, the applicant answered no. The record shows that the applicant signed the Form I-589 asylum application thereby certifying under the penalty of perjury that the information contained in such application was true and correct. Moreover, the Form I-589 asylum application contains no indication that it was prepared by any individual other than the applicant. The applicant's testimony contained in the Form I-589 asylum application contradicted his claim of continuous residence in the United States since prior to January 1, 1982.

The record also contains a Form EOIR-42B, Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents, which had been prepared by counsel on the applicant's behalf on September 13, 2001. At part #19 of the Form EOIR-42B application where applicants were asked to list the date they first arrived in the United States, counsel listed the date of the applicant's first arrival in this country as November 5, 1990.

The fact that the applicant provided testimony in both the Form I-589 asylum application and the Form EOIR-42B application that directly contradicted his claim of residence in the United States for the requisite period only serves to lessen the applicant's overall credibility and the credibility of such claim of residence.

The district director determined that the applicant failed to submit sufficient evidence demonstrating his residence in the United States in an unlawful status from prior to January 1, 1982. The district director further determined that the applicant's testimony in his Form I-589 asylum application relating to his political activities in India in 1988 and his admission that he first arrived in the United States in November 1990 contradicted his claim of residence in this country for the requisite period. Therefore, the district director concluded that the applicant was ineligible to adjust to temporary residence and denied the Form I-687 application on May 4, 2006.

On appeal, the applicant claimed that typographical errors were made by the individual who prepared the previously submitted Form I-589 asylum application that resulted in the mistaken perception he had been in India in 1988 rather than 1989. However, as noted above, the record shows that the applicant signed the Form I-589 asylum application thereby certifying under the penalty of perjury that the information contained in such application was true and correct. Moreover, the Form I-589 asylum application contains no indication that it was prepared by any individual other than the applicant. Consequently, the explanation offered by the applicant on appeal that the preparer of the Form I-589 asylum application made errors in executing this document cannot be considered as either reasonable or credible.

The applicant asserted that he has provided sufficient evidence including postmarked envelopes and affidavits to support his claim that he resided in the United States since prior to January 1,

1982. As previously discussed, the applicant submitted four original envelopes that are postmarked May 1, 1981, June 10, 1981, March 16, 1982, and October 2, 1985, respectively. These envelopes bear Indian postage stamps and were purportedly mailed from India to the applicant at addresses that he claimed as residences in this country. A review of the envelopes postmarked May 1, 1981 and June 10, 1981 and the *2006 Scott Standard Postage Stamp Catalogue* Volume 3 (Scott Publishing Company 2005) reveals the following:

- Both envelopes bear an Indian stamp that is valued at fifty paise, commemorates the Indian dairy industry, and depicts a woman carrying a jar on her head, dairy cows, and milk containers. This stamp is listed at page 812 of Volume 3 of the *2006 Scott Standard Postage Stamp Catalogue* as catalogue number 914 A537. The catalogue lists the date of issue for this stamp as January 25, 1982.

The fact that envelopes postmarked May 1, 1981 and June 10, 1981, respectively, both bear a stamp that was not issued until well after the date of these postmarks establishes 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. By engaging in such an action, the applicant has seriously undermined 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 until the date he attempted to file for temporary resident status.

In addition, the applicant's testimony in both the Form I-589 asylum application and the Form EOIR-42B application that he first arrived in this country in November 1990 further compromises the credibility of his claim of continuous residence in the United States since prior to January 1, 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 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 the applicant misrepresented the date that he first arrived in the United States and thus casts doubt on his eligibility for adjustment to temporary resident status under section 245A of the Act.

The AAO issued a notice to the applicant and counsel on June 4, 2008 informing the parties that it was the AAO's intent to dismiss the applicant's appeal based upon the applicant's own contradictory testimony and 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 applicant and counsel were granted fifteen days to provide substantial evidence to overcome, fully and persuasively, these findings.

In response, the applicant submits a statement in which he claims that the two envelopes postmarked May 1, 1981 and June 10, 1981 were mailed by his parents from India to him in the

United States in 1981 despite the fact that both envelopes bore a stamp that was not issued until January 25, 1982. The applicant asserts that the Indian post office made a mistake in placing this stamp on these two envelopes. The applicant now contends that typographical errors relating to the date he first entered this country were made by both of the individuals who prepared the Form I-589 asylum application and the Form EOIR-42B application. The applicant submits a revised Form I-589 asylum application as well as revised Form EOIR-42B application. However, the applicant fails to provide any independent evidence to substantiate any of the claims put forth in his response. Without independent evidence to corroborate the applicant's contentions, the explanations advanced in the response cannot be considered as persuasive. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998)(citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

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 existence of derogatory information that establishes the applicant used postmarked envelopes in a fraudulent manner and made material misrepresentations seriously undermines 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. Moreover, the applicant has further impaired his own credibility and the credibility of his claim of residence in the United States since prior to January 1, 1982 by offering contradictory testimony in both the Form I-589 application and the Form EOIR-42B application relating to the date he first arrived in this country. 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 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 and his own contradictory testimony, 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 time he attempted to file for temporary resident status as required under section 245A(a)(2) of the Act. 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 is, therefore, ineligible for temporary resident status under section 245A of the Act.

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