



U.S. Citizenship
and Immigration
Services

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FILE:

[REDACTED]

Office: LOS ANGELES

Date: DEC 08 2008

MSC 06 098 23108

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 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.

John F. Grissom, Acting 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 Director, Los Angeles, California. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed with a finding of fraud.

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, on January 6, 2006. The applicant was interviewed on May 19, 2006 in connection with his Form I-687. On July 21, 2006 the director denied the application. The director observed that the applicant had been convicted of a felony in 1999 and thus had failed to meet his burden of proof by a preponderance of the evidence that he is statutorily eligible for the benefit sought.

On appeal, counsel for the applicant asserts that the conviction is a misdemeanor under California law and submits the pertinent statute in support of his assertions. Upon review of the file, the AAO issued a Notice of Intent to Deny (NOID) the application on October 3, 2008. The AAO notified the applicant and his attorney of record of derogatory information in the file and afforded the applicant 15 days from the date of the letter to respond to the notice. As of this date, the AAO has not received a response.

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 applicant attempted to file the application. 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 or attempting to file the application. 8 C.F.R. § 245a.2(b)(1).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and physical 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 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 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 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. See 8 C.F.R. § 245a.2(d)(6).

Even if the director has some doubt as to the truth, if the applicant 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.

In the October 3, 2008 NOID, the AAO observed that the applicant listed his addresses at part #30 of the Form I-687 application on appeal, (filed Form I-687), during the pertinent time period between January 1, 1982 and May 4, 1988 as: [REDACTED], Azusa, California from 1981 to 1984; [REDACTED] Glendora, California from 1984 to 1985; and [REDACTED] Azusa, California from 1985 to 1988. At part #32, the applicant listed his only absence from the United States since entry as in September 1987 to October 1987 to go to Mexico to visit his ill mother.

The applicant listed his employment in the United States at part #33 of the filed Form I-687 as employment with: Mike Metro Plus as a cook at an unidentified location in Covina, California in January 1982, without specifying an end date in regards to this employment; [REDACTED] as a machine operator at an unidentified location in Azusa, California from April 1983 to October 1984; Trico Inc. in 1984 at an unidentified location, in an unidentified occupation, and an unidentified end date in regards to this employment; T.J. Masonary in 1984 at an unidentified location, in an unidentified occupation, and an unidentified end date in regards to this employment; Blue Ribbon Landscape in 1984 at an unidentified location, in landscape as the occupation, and an unidentified end date in regards to this employment; Swiss House in 1985 at an unidentified location in Glendora, California. in an unidentified occupation, and an unidentified end date in regards to this employment; and [REDACTED] from March 1985 to June 1985 at an unidentified location in Monrovia, California as a dishwasher. The applicant did not list any other employment except his current occupation as the owner of [REDACTED] Canopies in Azusa, California beginning in 1995.

The record also contains a Form I-687 signed and certified by the applicant on July 30, 1990. The applicant indicated on this Form I-687 at part #33, his addresses during the pertinent time period as: 151

[REDACTED], Azusa, California from November 1981 to January 1985; and [REDACTED] Azusa, California from January 1985 to January 1990. The applicant also indicated on this same Form I-687 at part #35 that he was absent from the United States from August 1987 to September 1987 to go to Mexico for a vacation.

Also on the July 30, 1990 Form I-687, the applicant indicated at part #36 that he was employed by Nike Metroplus at [REDACTED], Covina as a cook from January 1982 to present (July 30, 1990); that he was employed part-time by [REDACTED] located at [REDACTED] Azusa as a machine operator from April 1983 to October 1984; and that he was employed part-time by [REDACTED] (The [REDACTED] Family Restaurant) as a dishwasher from March 1985 to June 1985.

The record further contains a Form I-485, Application to Register Permanent Resident or Adjust Status, and documents submitted in support of the Form I-485 application. Included in the documents submitted is an affidavit signed by [REDACTED], residing at [REDACTED], Glendora, California, on July 4, 1990. The affiant declares that the applicant is his nephew and that the applicant was living at his house "from January 1981 to November 1981 and address indicate [sic] the same as above." The affiant also declares that he has personal knowledge that the applicant resided at [REDACTED], Glendora, California from January 1981 to November 1981; at [REDACTED], Azusa, California from November 1981 to January 1985; at [REDACTED], Azusa, California from January 1985 to January 1990.

The above documents contain inconsistencies regarding the applicant's address or addresses in 1981, 1984, and 1985. Although requested to clarify where he lived during these years, the applicant has not done so. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The AAO does not find the evidence regarding the applicant's addresses in the United States consistent and as such they are not probative in establishing that the applicant resided in the United States for the requisite period.

In addition to the information submitted on the Form I-687 that is the subject of this appeal and the July 30, 1990 Form I-687 noted above, the record includes the following information and documents relating to the applicant's claimed employment:

- A January 29, 1988 letter signed by V [REDACTED], controller, on the letterhead of Trico Plastics, Inc, located in Azusa, California. The controller indicates that the applicant (with name spelled [REDACTED]) was employed by Trico Plastics from April 3, 1983 to October 27, 1983 and that the payroll records are available at Trico Plastics, Inc.
- Photocopies of payroll stubs from Trico Plastics, Inc. for the periods ending April 10, 1983, May 29, 1983, June 12, 1983, August 28, 1983, January 8, 1984, January 15, 1984, and February 26, 1984 issued to employee P115 but with no name listed as payee on the documents.

- Photocopies of employment check stubs from Blue Ribbon Landscape Construction for the periods ending April 30, 1984, June 20, 1984, June 30, 1984, October 31, 1984, November 14, 1984, November 21, 198_, November 27, 1984, December 5, 1984, and December 12, 1984 issued to the applicant and showing state and federal tax and social security tax withheld.
- A blank Form W-2, Internal Revenue Service (IRS) Wage and Tax Statement for the year 1984.
- A photocopy of the first page of a 1984 IRS Form 1040EZ Income Tax Return for Single filers with no dependents listing the applicant as the filer, with two Forms W-2 for the 1984 year superimposed on the Form 1040EZ. One of the 1984 Forms W-2 shows Blue Ribbon Landscape Construction as the employer, an illegible name as the employee, and the address of the employee as on Alford in Glendora, California. The second Form W-2 does not include legible information.

The January 29, 1988 employment letter signed by the Trico Plastics, Inc. controller states that the applicant was employed by Trico Plastics, Inc. from April 3, 1983 to October 27, 1983. However, the applicant submitted copies of payroll stubs from Trico Plastics, Inc. for periods ending in January 8, 1984, January 15, 1984, and February 26, 1984 and claims on the filed Form I-687 that the controller, [REDACTED] employed him as a machine operator from April 1983 to October 1984 and that Trico Inc. employed him in 1984 at an unidentified location, in an unidentified occupation, and an unidentified end date in regards to this employment. The applicant also stated on the July 30, 1990 Form I-687 that he was employed part-time by [REDACTED] located at [REDACTED] Azusa as a machine operator from April 1983 to October 1984.

As the applicant appears to claim employment with Trico Plastics, Inc. after October 27, 1983, the AAO requested that the applicant submit an explanation as to why the subsequent employment was not included in Trico Plastics, Inc.'s records. The AAO finds the information in the record regarding the applicant's claimed employment with Trico Plastics, Inc. inconsistent, and as such ineffectual in establishing that the applicant resided in the United States for the requisite period. The AAO finds that although the controller of Trico Plastics, Inc. indicates that [REDACTED] was employed by Trico Plastics from April 3, 1983 to October 27, 1983 and that the payroll records are available at Trico Plastics, Inc., the employer does not include the applicant's address at the time of employment, period of layoff, duties with the company or whether the information in the letter was taken from Trico Plastics' records or whether the United States Citizenship and Immigration Service (USCIS) may have access to the records. Thus, the Trico Plastics, Inc. January 29, 1988 letter does not comply with the criteria found at 8 C.F.R. § 245a.2(d)(3)(i).

The AAO observes that the applicant submitted a number of employment check stubs from Blue Ribbon Landscape Construction for the 1984 year, but failed to specify the location of this employment and when this employment ended on the filed Form I-687. In addition, the applicant failed to include this claimed employment on the July 30, 1990 Form I-687, signed and certified by him. The AAO also noted that the record included a blank 1984 Form W-2 and found that a blank 1984 Form W-2 casts doubt on the legitimacy of the photocopied Forms W-2 superimposed on the applicant's 1984 IRS Form 1040EZ as

well as any work the applicant might have performed in the United States during the 1984 year. Although the AAO requested an original of the applicant's 1984 Form W-2, and a certified printout of the 1984 IRS Form 1040EZ filed with the IRS, the applicant failed to provide the requested information. The AAO finds that the lack of consistent information in the record and the inclusion of the blank Form W-2 undermine the applicant's claim that he worked in the United States in 1984.

The record also includes photocopies of documents that appear to have altered dates. For example:

- A photocopy of a Travelers Express Money Order showing the payee as [REDACTED] the applicant's name written on the "amount" line superimposed over an illegible money amount and a date of 12/92/81. The date appears to have been written over smudged writing. The date and the applicant's superimposed name draw into question the legitimacy of this document.
- A photocopy of a Western Union telegraphic money transfer receipt dated 4-9-82 to be paid to [REDACTED] in Mexico. The year "82" on the photocopy appears to have been written in different ink and appears to be written over another date.
- A photocopy of a Wells Fargo Bank international money order showing the payee as [REDACTED], showing the applicant's name written on the "amount" line superimposed over an illegible money amount and a date of August 5, 1982. The date is partially typewritten and the "2" in the 1982 appears to have been either written in or typed at a different time, as the "2" does not line up with the other typewritten numbers.
- A photocopy of a utility bill issued to the applicant for the service address of [REDACTED], with the start date indicated as Jan 03 1982. The "1982" portion of the typewritten date appears to be a different font than the "Jan 03" portion of the date. In addition, the applicant states on the filed Form I-687 that he lived at the [REDACTED], Azusa, California address from 1985 to 1988, not in 1982.

In addition, the AAO finds that the applicant has submitted a document that appears to have been altered to substantiate the applicant's residence in the United States in 1981. The AAO finds that the applicant's failure to provide originals of these documents and the failure of the applicant to rebut the AAO's observations regarding the alterations detracts from the applicant's claimed residence in the United States in 1981, 1982, and 1983. The evidentiary rule at 8 C.F.R. § 245a.2(d)(6) provides: "[i]n judging the probative value and credibility of the evidence submitted, greater weight will be given to the submission of original documentation." In light of this evidentiary rule and the fact that photocopies do not allow a determination regarding the address alterations or word and number substitutions as would originals of the documents, the AAO finds that these documents do not have probative value. The AAO finds that these documents do not establish the applicant's entry into the United States prior to January 1, 1982 and residence in the United States in 1982 and 1983.

The only other document in the record submitted that includes the 1981 year is the affidavit referenced above, that was signed by [REDACTED] on July 4, 1990. However, the AAO finds that the affiant does not include details about the applicant during the attested periods and about the applicant's

association with the affiant that would demonstrate the truth of the affidavit's assertions regarding the applicant's residence in the United States. The affidavit does not contain details or information that assist in verifying the applicant's asserted association with the affiant. The extent of the information that the affiant provides about his relationship with the applicant is minimal. The generality of the information and the lack of detail regarding the circumstances and events of the affiant's interactions with the applicant undermine the reliability of the information in the affidavit. In addition, the AAO notes that the applicant did not claim to reside at the [REDACTED] Glendora, California address from January 1981 to November 1981 in his response to part #30 of the filed Form I-687. The record does not include substantive, credible evidence of the applicant's entry into the United States prior to January 1, 1982.

Similarly, the applicant has submitted three documents that appear to contain altered dates in an effort to substantiate his residence in 1982. The AAO finds again that the applicant's failure to submit the originals of these documents for analysis, although requested to do so diminishes the probative value of these documents. Further, the applicant has provided confusing statements regarding his claimed employment in 1982, including a statement that he worked as a cook at Mike Metro Plus in Covina, California in January 1982 (without specifying an end date to his employment with that company) and a statement that he was also employed by [REDACTED] from January 1982 to at least July 30, 1990, on the July 30, 1990 Form I-687. Although requested to clarify these confusing statements, the applicant has not provided evidence to substantiate or otherwise clarify these statements regarding employment with Nike Metroplus in years subsequent to 1982.

The AAO requested that the applicant provide certified printouts from the IRS of a 1983 IRS Form 1040A, U.S. Individual Income Tax Return, and information substantiating that the unsigned photocopy of a California Form 540A, California Resident Individual Income Tax for the 1983 year had been filed. The applicant failed to provide this information. The AAO does not find the first page of the 1983 IRS Form 1040A and the unsigned copy of the California Form 540A, California Resident Individual Income Tax probative to establish that the applicant resided in the United States in 1983. As observed above, the only evidence submitted regarding the applicant's residence in the United States in 1984 are the applicant's statements and the questionable information regarding employment with Blue Ribbon Landscape Construction. Thus, the record also fails to establish the applicant's residence in the United States in 1984.

The AAO has also taken note of the applicant's plea of *nolo contendere* to a violation of section 10980(c)(2) of the California Welfare and Institutions Code, on February 8, 2000. This section reads:

- (c) Whenever any person has, willfully and knowingly, with the intent to deceive, by means of false statement or representation, or by failing to disclose a material fact, or by impersonation or other fraudulent device, obtained or retained aid under the provisions of this division for himself or herself or for a child not in fact entitled thereto, the person obtaining this aid shall be punished as follows:
 - (2) If the total amount of the aid obtained or retained is more than four hundred dollars (\$400), by imprisonment in the state prison for a period of 16 months, two

years, or three years, by a fine of not more than five thousand (\$5,000), or by both imprisonment and fine; or by imprisonment in the county jail for a period of not more than one year, by a fine of not more than one thousand (\$1,000), or by both imprisonment and fine.

The AAO finds that this conviction is a misdemeanor under California law and thus the applicant is not ineligible for adjustment. However, in light of this conviction, the submission of a blank Form W-2, the applicant's inconsistent statements regarding where he worked and lived, his submission of altered documents, the AAO finds that the applicant has 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 to 1985. Although minor inconsistencies exist, the AAO finds sufficient independent consistent evidence establishing the applicant's residence in the United States from 1986 through the remainder of the requisite period. The applicant, however, has not established his residence in the United States from prior to January 1, 1982 through 1985.

Upon review of the totality of the record including the evidentiary deficiencies and alterations noted above, the AAO determines that the evidence is insufficient to establish entry into the United States prior to January 1, 1982 and continuous unlawful presence for the requisite time period. Due to the lack of sufficient probative and credible evidence in support of the application, it is concluded that the applicant has failed to meet his burden of proof and failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through 1984, as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M--*, *supra*. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis. The appeal will be dismissed.

In addition, as the record reflects that the applicant has submitted contradictory applications and made material misrepresentations to gain lawful status in the United States, the AAO finds that the applicant has sought to procure a benefit provided under the Act through fraud and willful misrepresentation of a material fact, a ground of inadmissibility under section 212(a)(6)(C) of the Act. Because the applicant has failed to provide independent and objective evidence to overcome this finding, fully and persuasively, the AAO affirms its finding of fraud. A finding of fraud is entered into the record, and the matter will be referred to the U.S. Attorney for possible prosecution, as provided in 8 C.F.R. § 245a.2(t)(4).

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