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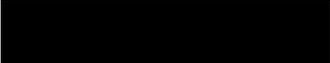
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FILE: MSC-05-250-12116

Office: NEWARK

Date: NOV 19 2008

IN RE: Applicant: 

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.

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, Newark, New Jersey. 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, together comprising the I-687 Application. 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.

On appeal, counsel asserts that the affidavits the applicant furnished are highly credible. Counsel contends that due to the passage of time, the settlement agreements permit the consideration of affidavits. Counsel contends that the affidavits in this case have been authenticated with the affiants' basis for the knowledge they describe. Counsel maintains that the applicant's evidence is substantial and the application should be granted.

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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.2(d)(6).

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 establish his continuous unlawful residence in the United States for the requisite period. Here, the submitted evidence is not relevant, probative, and credible.

The record shows that on June 7, 2005, the applicant filed a Form I-687, Application and Supplement, with Citizenship and Immigration Services (CIS).¹ The record also shows that on June 4, 2002, the applicant filed a Form I-485, Application to Adjust Status, under Section 1104 of the Legal Immigration Family Equity (LIFE) Act. The applicant furnished the following relevant documentation with his applications:

- An affidavit from [REDACTED] that states she has known the applicant since January 1987. It states that the applicant was a flower vendor in Jersey City and she purchased flowers from him.
- An affidavit from [REDACTED] that states he resided with the applicant at [REDACTED] from March 1981 to April 1986. It states that he has

¹ The record further shows that in October 1991 the applicant submitted a Form I-687 to the former Immigration and Naturalization Service for a determination of his CSS class membership.

knowledge of the applicant's employment at Platform Deli Restaurant in New York, New York from March 1981 to February 1983 and G & A Service Station in Long Island City, New York from May 1983 to April 1986.

- An affidavit, dated June 18, 1991, from [REDACTED] President of Platform Deli Restaurant, located in New York, New York. The affidavit states that the applicant worked at the restaurant from March 1981 to February 1983 as a delivery man.

An affidavit, dated June 18, 1991, from [REDACTED] President of G & A Service Station, located in Long Island City, New York. The affidavit states that the applicant worked from May 4, 1983 to April 22, 1986 as a Gas Station Attendant.

- A letter from [REDACTED] Surgeon in Lyndhurst, New Jersey. This letter states that the applicant visited his office in April 1988 for treatment of a skin infection and high blood pressure.
- A handwritten receipt for the applicant's payment of rent on March 1, 1988.
- An envelope addressed to the applicant at [REDACTED] New York, which is nearly identical to an address where the applicant claims to have resided during the requisite period. The applicant showed on his Form I-687 that he resided at [REDACTED] New York from March 1981 to April 1986. This envelope is postmarked November 2, 1981, bears three Indian postage stamps, and shows a return address from Haryana, India.

On September 15, 2006, the director issued a denial notice to the applicant. The director stated that CIS has no means to verify the authenticity and credibility of the envelope bearing Indian postage stamps. The director found that the March 1988 receipt was not accompanied by evidence that a check or money order was cashed. The director found that the affidavits are not accompanied by evidence that there was a relationship between the affiants and the applicant. The director also found that there is no evidence that the affiants were in the United States during the requisite period. The director noted that the letter from [REDACTED] was not accompanied by medical records and any evidence that an actual doctor-patient relationship existed. The director concluded that the applicant failed to prove his residence in the United States during the requisite period.

On appeal, counsel asserts that the affidavits the applicant furnished are highly credible. Counsel contends that due to the passage of time, the settlement agreements permit the consideration of affidavits. Counsel contends that the affidavits in this case have been authenticated with the affiants' basis for the knowledge they describe. Counsel maintains that the applicant's evidence is substantial and the application should be granted.

During the adjudication of the applicant's appeal, information came to light that adversely affects the applicant's overall credibility as well as the credibility of his claim of residence in the United States during the requisite period. As previously discussed, the applicant furnished as corroborating evidence an envelope purportedly mailed to him from India. This envelope is postmarked November 2, 1981, bears three Indian postage stamps, and shows a return address from Haryana, India. The envelope is addressed to the applicant at [REDACTED] Flushing, New York, which is nearly identical to the address where he claims to have resided from March 1981 to April 1986.

The 2006 Scott Standard Postage Stamp Catalogue² reveals that this envelope bears stamps that were not issued until well after the date of the postmark. The envelope bears a postage stamp with a value of 2 Rupees that depicts S [REDACTED]. This stamp is listed at page 838 of volume 3 of the 2006 Scott Standard Postage Stamp Catalogue as catalogue number [REDACTED]. The envelope bears another postage stamp with a value of 5 Rupees that depicts a Leopard Cat. This stamp is listed at page 839 of volume 3 of the 2006 Scott Standard Postage Stamp Catalogue as catalogue number [REDACTED]. The catalogue lists the dates of issue for both of these stamps as April 25, 2000.

The fact that this envelope, postmarked November 2, 1981, bears stamps that were not issued until well after the date of this postmark establishes that the applicant utilized this document in a fraudulent manner and made a material misrepresentation 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 the United States during the requisite period. Because the applicant has submitted a falsified document, we cannot accord any of his other claims any weight.

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. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). 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. *Id.* 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 temporary resident status.

Section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), 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

² 2006 Scott Standard Postage Stamp Catalogue vol. 3, [REDACTED]

documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

The AAO issued a notice to both the applicant and counsel on October 7, 2008, informing them that it was the AAO's intent to dismiss the applicant's appeal based upon the fact that he had submitted fraudulent evidence in an attempt to establish his residence within the United States for the requisite period and thus gain a benefit under the Act. The AAO further informed the applicant of the relevant ground of inadmissibility under Section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), and that, as a result of his actions, his appeal would be dismissed.

The applicant was granted fifteen days to provide substantial evidence to overcome, fully and persuasively, these findings. On October 23, 2008, the AAO received a letter from the applicant, stating that the variation of the dates in the postage stamps is to be verified from the Department of Posts and Telegraph of the government of India. The applicant requested an extension of time to verify the postage stamps. However, the date the postage stamps were issued has been established in the *2006 Scott Standard Postage Stamp Catalogue*. Therefore, the AAO will deny the applicant's request for additional time. As discussed, it is incumbent on the applicant to resolve inconsistencies by independent objective evidence pursuant to *Matter of Ho, supra*. The applicant has failed to provide any such evidence and has not overcome the basis for a finding of fraud.

The existence of derogatory information negates the credibility of the applicant's claim of residence in the United States for the requisite period, as well as the credibility of the documents he submitted in support of such 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. The applicant has failed to submit sufficient credible documentation to meet his burden of proof in establishing by a preponderance of the evidence that he has resided in the United States for the requisite period, as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M-*, 20 I&N Dec. 77 (Comm. 1989). The applicant is, therefore, ineligible for temporary resident status under Section 245A of the Act on this basis.

In addition, 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)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i). 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.