



U.S. Citizenship
and Immigration
Services



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Date: **NOV 19 2012**

Office: HOUSTON

FILE:



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.

IN 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.

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The applicant's status as a 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 terminated by the Director, Houston, Texas. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined that the applicant had not demonstrated that she had continuously resided in the United States in an unlawful status since before January 1, 1982 through the date that she attempted to file a Form I-687, Application for Status as a Temporary Resident, with the Immigration and Naturalization Service or the Service (now United States Citizenship and Immigration Services or USCIS) in the original legalization application period between May 5, 1987 to May 4, 1988. Therefore, the director concluded that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of section 245A of the Immigration and Nationality Act (Act) and terminated the applicant's temporary residence.

On appeal, the applicant reiterated her claim of residence in the United States for the requisite period and asserted that she had submitted sufficient evidence to establish such claim. The applicant included copies of previously submitted documentation in support of her appeal.

The AAO has reviewed all of the evidence, and has made a *de novo* decision based on the record and the AAO's assessment of the credibility, relevance and probative value of the evidence.¹

An applicant for temporary residence 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 Immigration and Nationality Act (Act), 8 U.S.C. § 1255a(a)(2) 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. Paragraph 11, page 6 of the CSS Settlement Agreement and paragraph 11, page 10 of the Newman Settlement Agreement.

¹ The AAO conducts appellate review on a *de novo* basis. The AAO's *de novo* authority is well recognized by the federal courts. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

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 "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 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 USCIS on December 28, 2005.

In support of her claim of residence in the United States for the requisite period, the applicant submitted affidavits of residence, original photographs, a photocopied rent receipt, a photocopied receipt for dental services, photocopied receipts for medical services, photocopied receipts for books, and photocopied envelopes.

The director subsequently approved the applicant's Form I-687 application for temporary residence on September 4, 2008.

Nevertheless, the director subsequently concluded that the supporting documents and testimony in the record could not be considered as credible because such evidence was not sufficient to corroborate the applicant's claim of residence in the United States for the requisite period. As a result, the director found that the applicant failed to establish that she continuously resided in this country in an unlawful status for the required period. Therefore, the 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 Act and terminated the applicant's temporary resident status on March 19, 2012.

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 her claim of residence in this country for the requisite period. As has been previously discussed, the applicant submitted supporting documentation including a photocopied envelope postmarked May 23, 1985. Although the applicant provided additional photocopied envelopes as supporting evidence, these additional envelopes contain postmarks dated subsequent to the termination of the requisite period. The photocopied envelope postmarked May 23, 1985 bears a single United States postage stamp and was represented as having been mailed from within this country to the applicant at an address in the United States. A review of the [REDACTED] reveals the following:

- The photocopied envelope postmarked May 23, 1985 bears a stamp that contains a stylized illustration of the United States flag and the notations [REDACTED] above the flag and "USA G For U.S. addresses only" below the flag. A review of Volume 1 of the 2 [REDACTED] reveals that this stamp is listed at page 85 of Volume 1 of the [REDACTED] as catalogue number 2881 A2208. The catalogue lists the date of issue for the stamp as December 13, 1994.

The fact that a photocopied envelope postmarked May 23, 1985, bears a stamp that was not issued until well after the date of this postmark establishes that the applicant utilized this document in a fraudulent manner and made material misrepresentations in an attempt to establish his residence within the United States for the requisite period. This derogatory information establishes that the applicant made material misrepresentations in asserting her claim of residence in the United States for the period in question and thus casts doubt on her eligibility for adjustment to temporary residence pursuant to the terms of the CSS/Newman Settlement Agreements and section 245A of the Act. By engaging in such an action, the applicant has negated her own credibility, the credibility of his claim of continuous residence in this country for the requisite period, and the credibility of all documentation submitted in support of such claim.

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).

In the notice dated October 9, 2012, the AAO informed the applicant and counsel that it was the AAO's intent to dismiss the applicant's appeal based upon the fact that she utilized the postmarked envelope cited above in a fraudulent manner and made material misrepresentations in an attempt to establish her residence within the United States for the requisite period. The applicant and counsel were granted twenty-one days to provide substantial evidence to overcome, fully and persuasively, these findings.

In response, the applicant submits a statement in which she claims that she had no knowledge of where the photocopied envelope in question had come from as she had reviewed all the evidence in her possession relating to her claim of residence in the United States for the requisite period and had not been able to find the original envelope. The applicant asserts that she did not commit any fraud and reiterates her claim of residence in this country since prior to January 1, 1982. The applicant indicates that she relied upon and paid an individual, Mr. [REDACTED] who had worked as the coordinator of a Qualified Designated Entity to prepare and file her initial legalization application and all supporting paperwork. The applicant contends that she had complete trust in this individual and believed that he had acted in a professional manner. However, the applicant's statements cannot be considered as a sufficient and reasonable explanation to overcome the fact that her supporting evidence includes a photocopied envelope postmarked May 23, 1985 and addressed to the applicant, which bears a stamp that was not issued until well after the date of this postmark. Further, the applicant fails to provide any explanation as to why Mr. [REDACTED] would have been motivated to commit fraud on the applicant's behalf by creating and submitting the photocopied envelope postmarked May 23, 1985, if in fact she had complete trust in this individual and believed that he had acted in a professional manner.

The existence of derogatory information that establishes the applicant used the postmarked envelope cited above 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. 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 her burden of proof in establishing that she 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, it is concluded that she has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through the time she 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 she submitted a falsified document, we affirm our finding of fraud. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act.

A finding of fraud is entered into the record, and the matter will be referred to the United States 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.