

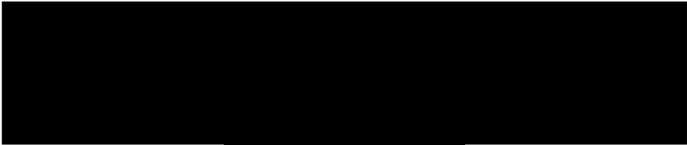


U.S. Citizenship
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FILE: [REDACTED]
MSC 05 158 10585

Office: DETROIT

Date: JUL 03 2007

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: SELF-REPRESENTED

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, Detroit, Michigan, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined 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 (the Service), now Citizenship and Immigration Services (CIS), in the original legalization application period of May 5, 1987 to May 4, 1988. Therefore, the director determined that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements and denied the application.

On appeal, the applicant reiterates his claim of continuous residence in the United States during the requisite period and submits additional evidence in support of his claim.

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).

An applicant 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, 8 U.S.C. § 1225a(a)(3).

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. CSS Settlement Agreement, paragraph 11 at page 6; and Newman Settlement Agreement, paragraph 11 at page 10.

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. See 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.

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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he resided in the United States from prior to January 1, 1982 through the date he attempted to file a Form I-687 application with the Service in the original legalization application period of May 5, 1987 to May 4, 1988. Here, the submitted evidence is not relevant, probative, and credible.

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 March 7, 2005. At part #30 of the Form I-687 application, where applicants are instructed to list all residences in the United States since first entry, the applicant indicated that he resided at [REDACTED] New York, New York” from July 1981 to February 1990. At block #31, where applicants are instructed to list all organizations or affiliations during the requisite period, the applicant indicated that he was affiliated with the Murid Islamic Community in New York, New York, from March 1989 to June 2000 and with [REDACTED] in New York, New York, from July 1990 to November 1995. At block #33, where applicants are instructed to list all employment in the United States since initial entry, the applicant indicated that he was self-employed as a street vendor at [REDACTED] New York, New York” from June 1985 to May 2003. The applicant did not list any employment in the United States prior to June 1985.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided photocopies of three receipts from the [REDACTED], located at [REDACTED] New York, New York," dated May 15, 1985, October 25, 1986, and November 2, 1986. These receipts appear to be generic cash receipts bearing two stamps with the name and address of the Bryant Hotel.

The applicant also submitted a letter dated February 15, 2000, from [REDACTED] of Murid Islamic Community in America, located at [REDACTED] New York, New York, stating that the applicant had been a member of that mosque since 1989. The record contains a letter dated January 10, 2006, from [REDACTED], the treasurer of the Murid Islamic Community in America, stating that the letter submitted by the applicant is fraudulent and the person who signed the letter, [REDACTED] is not, and has never been, the permanent secretary of that organization.

The applicant included a letter dated December 14, 1989, from [REDACTED] of [REDACTED] located at [REDACTED] New York, New York, stating that the applicant had been a member of that mosque since 1981. The record contains a letter dated January 9, 2006, from [REDACTED] of [REDACTED] in which he states, "[w]e do not recognize any letter by any person stating that any individual was a member of this community prior to 1993. . . . [REDACTED] is not presently a member of our organization."

During his legalization interview, the applicant claimed in a sworn statement under penalty of perjury that he and his father entered the United States without inspection from Mexico in January 1981. The applicant stated that he and his father lived in a hotel in New York City for three months and then lived in a house on [REDACTED] Bronx, New York, for two years. The applicant further stated that he was a member of the Murid Islamic Community in America and that he obtained his membership letter from [REDACTED] at that mosque in 2000. Finally, the applicant stated that he was a member of [REDACTED] and that he got the affidavit from [REDACTED] after Friday services.

In a notice dated February 7, 2006, the district director informed the applicant of his intent to deny the application because he had not demonstrated his eligibility for temporary resident status. The district director stated that the document from the Murid Islamic Community in America had been confirmed to be a fraudulent document. The district director afforded the applicant thirty days to submit evidence to overcome the intended basis for the denial of his application. The applicant, in response, submitted an affidavit from [REDACTED] stating that he had known the applicant since 1981, at which time they met in an African store in Harlem. However, [REDACTED] failed to provide any relevant and verifiable testimony, such as the applicant's address(es) of residence in this country, to corroborate the applicant's claim of residence in the United States for the requisite period.

The district director denied the application on April 17, 2006, because the applicant failed to submit sufficient credible evidence to establish continuous residence in the United States during the requisite period. The district director stated:

The letter you submitted from the Murid Islamic Community in America (MICA) has been confirmed to be fraudulent. You stated in a sworn statement that you picked up this letter from [REDACTED] at that mosque personally in 2000. No such person has ever worked at that mosque as the Permanent Secretary. The letter from the [REDACTED] . . . [is] also believed to be fraudulent.

The director stated that the applicant had committed an offense in violation of section 245A(6)(C)(i) of the Act as an alien who knowingly made a false statement or used a false document in an attempt to establish eligibility.

On appeal, the applicant repeats his claim of continuous residence in the United States during the requisite period and submits an affidavit dated November 20, 2005, from [REDACTED] residing at [REDACTED] Detroit, Michigan, stating that the applicant has been residing in the United States for over 20 years and that “[w]e met in the street when he was a peddler.” The affiant failed to provide any relevant and verifiable testimony, such as the inclusive dates of his acquaintance with the applicant or the applicant’s address(es) of residence in this country, to corroborate the applicant’s claim of residence in the United States for the requisite period. Furthermore, the affiant resides in Detroit, Michigan. According to the Form I-687, the applicant did not move to Michigan until July 2003. Since the applicant has indicated that he did not move to Michigan until 2003, the affiant appears to be relying on second-hand information provided to him by the applicant. Therefore, the testimony of this affiant will be accorded little evidentiary weight.

On June 12, 2007, in accordance with the regulation at 8 C.F.R. § 103.2(b)(16)(i), this office issued a notice advising the applicant of derogatory information. Specifically, the AAO notified the applicant that he had submitted fraudulent membership letters from Murid Islamic Community in America and from [REDACTED], both located in New York, New York, in support of his claim of continuous residence in the United States during the requisite period.

The AAO’s June 12, 2007, notice stated:

In an attempt to establish continuous unlawful residence in the United States since prior to January 1, 1982, you submitted a letter dated February 15, 2000, from [REDACTED] [REDACTED] who identified himself as the Permanent Secretary of the Murid Islamic Community in America, located at 46 Edgecombe Avenue, New York, New York. [REDACTED] stated in his letter that you had been a well-respected member in good standing of his organization since 1989. The record contains a letter dated January 10, 2006, from [REDACTED], Treasurer of Murid Islamic Community in America, in which [REDACTED] stated that the letter you submitted in support of your application was fraudulent. [REDACTED] further stated, “[t]he person who signed this

letter in the name of [REDACTED] is not the permanent secretary of our organization and has never been so.”

You also submitted a letter dated December 14, 1989, from [REDACTED], who identified himself as the Public Information Officer for Masjid Malcolm Shabazz, located at 102 West 116th Street, New York, New York. [REDACTED] stated in his letter that you had been a member of his community since 1981. The record contains a letter dated January 9, 2006, from [REDACTED], an official with Masjid Malcolm Shabazz [REDACTED] stated in his letter:

As per our telecom, this is certifying that we do not recognize any letter by any person stating that any individual was a member of this community prior to 1993.

The present administration has been in office since 1993. Since that time our organization hosted several African Organization and groups under our umbrella.

We cannot vouch for the authenticity of any one who is a regular attendee prior to 1993.

[REDACTED] is not presently a member of our organization.

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 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, 591-92 (BIA 1988). The above derogatory information indicates that you have submitted fraudulent documentation in support of your application for temporary resident status. For this reason, we cannot accord any of your other claims any weight.

If you choose to contest the AAO’s findings, you must offer substantial evidence from credible sources addressing, explaining, and rebutting the discrepancies described above. The regulation at 8 C.F.R. § 103.2(b)(16)(i) does not specify the amount of time afforded to an applicant or petitioner to respond to derogatory evidence. We consider fifteen (15) days to be ample time for this purpose. Therefore, you are hereby afforded 15 days from the date of this letter in which to respond to this notice. If you do not submit such evidence within the allotted fifteen-day period, the AAO will dismiss your appeal. If you choose to respond, please submit your response to the address shown on the first page of this letter. Also, please reference your file number, A93 431 327, in your response.

Because so much of the derogatory information concerns falsified documents, we will obviously not accept any photocopied documentation as evidence to overcome the above derogatory information. Pursuant to 8 C.F.R. § 103.2(b)(5), we have the discretion to request the originals of any photocopies submitted. We reiterate that, pursuant to *Matter of Ho, supra*, you cannot overcome the above findings simply by offering a verbal explanation.

The applicant failed to respond to the notice within the allotted 15-day period.

In summary, the applicant has submitted fraudulent documents attesting to his residence in the United States during the requisite period. He has not provided any contemporaneous evidence of residence in the United States relating to the 1981-88 period, and has submitted attestations from only two people concerning that period, both of which lack specific details or verifiable information.

Section 212(a)(6)(C) of the Act 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 documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

By engaging in such action, the applicant has negated 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 May 4, 1988. In addition, the applicant rendered himself inadmissible to the United States under any visa classification, immigrant or nonimmigrant, pursuant to section 212(a)(6)(C) of the Act by committing acts constituting fraud and willful misrepresentation.

The absence of sufficiently detailed supporting documentation and the existence of derogatory information that establishes the applicant submitted fraudulent membership letters from two mosques and made material misrepresentations all seriously undermine 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 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)(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 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.

In addition, the fact that the applicant submitted fraudulent documents and made material misrepresentations in an attempt to establish his residence in the United States for the requisite period rendered him inadmissible to this country pursuant to section 212(a)(6)(C) of the Act. 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.

This finding of fraud shall be considered in the current proceeding as well as any future proceeding where admissibility is an issue. The applicant failed to establish that he is admissible to the United States as required by 8 C.F.R. § 245a.2(d)(5). Consequently, the applicant is ineligible to adjust to temporary residence under section 245A of the Act on this basis as well.

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

FURTHER ORDER: The AAO finds that the applicant knowingly submitted fraudulent documents in an effort to mislead Citizenship and Immigration Services and the AAO on elements material to his eligibility for a benefit sought under the immigration laws of the United States. Accordingly, he is inadmissible under section 212(a)(6)(C) of the Act.