

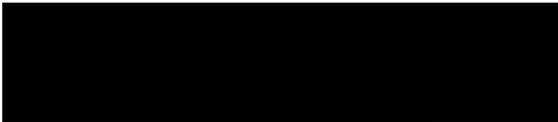


U.S. Citizenship
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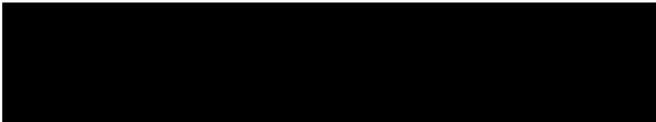
IN RE:

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



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, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district 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 or the Service (now Citizenship and Immigration Services or 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 claims that he first entered the United States in 1980 and has resided continuously in this country since that date. He submits affidavits in support of his claim.

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 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. § 1255a(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; 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 April 25, 2005. At part #30 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the applicant indicated that he resided at [REDACTED] Santa Barbara, California” from December 1984 to June 1993. The applicant did not list any addresses in the United States prior to December 1984. At part #33, where applicants were asked to list all employment since first entry into the United States, the applicant indicated that he worked as a janitor for Supreme Cleaning in Santa Barbara, California, from 1985 to 1995. The applicant did not list any employment in the United States prior to 1985.

At his interview with a CIS officer on March 27, 2006, the applicant stated in a sworn statement before a CIS officer, “[y]o entre en los estados unidos en 12-12-84 primera vez. Yo nunca sali de los estados unidos desde que yo entre por primera vez.” (Translation: I first entered the

United States in December 1984. I have never left the United States since I entered for the first time.)

On appeal the applicant states:

At the time of my interview I was asked when I had arrived. I misunderstood the question to mean when I arrived in California. By your letter, I now understand that I was being asked when I arrived to the United States. . . . I arrived to the United States in 1980 and lived in Raymondville, Texas. I moved to California in 1984 and have resided here ever since.

In support of his statement on appeal, the applicant submits an affidavit dated May 3, 2006, from [REDACTED] stating that she has known the applicant since 1980. [REDACTED] explains that the applicant and her husband were co-workers at that time and she met the applicant through her husband. [REDACTED] did not provide the name of the employer for whom her husband and the applicant purportedly worked, nor did she provide any information regarding the applicant's address[es] during the period of their acquaintance.

The applicant also provides a statement dated April 19, 2006, from [REDACTED] stating that the applicant was living in Raymondville, Texas, around July 1980 and working for [REDACTED] during that period. However [REDACTED] provided no information regarding the basis of her acquaintance with the applicant, the inclusive dates of her acquaintance with the applicant, or the applicant's addresses throughout the relevant period.

The applicant included a statement dated April 19, 2006, from [REDACTED] stating that the applicant was living in Raymondville, Texas around July 1980 and working for [REDACTED]. [REDACTED] provided no information regarding the basis of his acquaintance with the applicant, the inclusive dates of his acquaintance with the applicant, or the applicant's address[es] during the period in question. It is noted that the applicant claims in his appellate statement that he lived with [REDACTED] and [REDACTED] from 1980 to 1984, but neither [REDACTED] nor [REDACTED] states that the applicant lived with them during that period.

The applicant's claim on appeal that he first entered the United States in 1980 and has resided continuously in this country since 1980 contradicts his sworn statement under penalty of perjury during his legalization interview that he first entered the United States in 1984. The applicant claims on appeal that he misunderstood the interviewing officer's question to mean when he first came to California, not when he first entered the United States. This statement is not credible since the applicant specifically stated in the Spanish language in the sworn statement that he first entered the United States in 1984, not that he first moved to California in 1984.

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. Further, it is incumbent on 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 lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582. (Comm. 1988).

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.

Under BIA precedent, a material misrepresentation is one which "tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in a proper determination that he be excluded." *Matter of S- and B-C-*, 9 I&N Dec. 436, 447 (BIA 1961).

The applicant stated in a sworn statement during his legalization interview that he first entered the United States on December 12, 1984. On appeal, the applicant advances a revised claim that he actually entered the United States in 1980 and lived and worked in Raymondville, Texas, for four years prior to moving to California. The applicant's revised claim on appeal raises serious questions of credibility regarding his claim. The conclusion that the applicant did not enter the United States until 1984 is further supported by the fact that he did not list any addresses or employment in the United States prior to 1984.

By engaging in such action, the applicant has negated his own credibility as well as the credibility of his claim of continuous residence in the United States during the requisite period. 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 AAO issued a notice to both counsel and the applicant on June 13, 2007, informing them that it was the AAO's intent to dismiss the applicant's appeal based on the fact that he made material misrepresentation of material facts in an attempt to establish continuous residence in the United States during the requisite period. The AAO further informed the applicant that he was inadmissible to the United States under section 212(a)(6)(C) of the Act as a result of his actions. The applicant was granted fifteen days to provide substantial evidence to overcome, fully and persuasively, these findings. However, as of the date of this decision, the applicant has failed to submit a statement, brief, or evidence addressing the adverse information relating to fraud and willful misrepresentation of material facts discussed above. 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 made material misrepresentations regarding his claimed dates of entry and residence in the United States

seriously undermines the credibility of the applicant's claim of continuous residence in the United States during 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 resided in the United States from prior to January 1, 1982, through 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(2) of the Act on this basis.

In addition, the fact that the applicant made material misrepresentations in an attempt to establish continuous residence in the United States during 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 advancing a revised claim on appeal that he entered the United States in 1980 and not in 1984 as he stated under oath during his legalization interview, 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 any objective evidence to overcome, fully and persuasively, our finding that he attempted to obtain an immigration benefit through the use of material misrepresentations of material facts, 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. § 210.3(b)(1). Consequently, the applicant is ineligible to adjust to temporary residence under section 210 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 used willful misrepresentation of material facts 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.