



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
MSC 05 168 11386

Office: HARTFORD

Date: JUL 13 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, Boston, Massachusetts, 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 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 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 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. 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 17, 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 lived at the Bryant Hotel, located at [REDACTED], New York, New York, from April 1981 to June 1992. At part #33, where applicants are instructed to list all employment since first entry into the United States, the applicant indicated that he was a self-employed street vendor in New York, New York, from October 1981 to November 1988.

During his interview with a CIS officer on January 5, 2006, the applicant stated that he entered the United States from Canada without inspection in April 1981. The applicant claimed that his first absence outside the United States was from November 1986 to January 1987. He stated that his second absence outside the United States was from October 1987 to December 1987, and his third absence was from January 1989 to February 1989. The applicant told the interviewing

officer that he was currently married, and that his wife and four children were all in Senegal. The applicant signed the interview statement swearing that it was a true and complete record of his legalization interview.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant provided an affidavit dated December 21, 2005, from [REDACTED]. [REDACTED] stated in his affidavit that he first met the applicant in 1981 in New York, New York, where the applicant was working as a street vendor in "Mart 125." [REDACTED] stated that he and the applicant eventually became friends and he remembered visiting the applicant at his room in the Bryant Hotel in New York, New York, to share African cuisine. [REDACTED] explained that he lost contact with the applicant "shortly thereafter" but then "met up with him again in 1989 at religious services in Manhattan." [REDACTED] did not provide the specific dates of his acquaintance with the applicant.

The applicant also provided an affidavit dated January 1, 2006, from [REDACTED], who stated that she met the applicant at a subway station in New York, New York "a few years ago". [REDACTED] further stated that she subsequently moved to Connecticut and encountered the applicant "three years ago" in a bank. [REDACTED] did not provide any information as to the dates of her acquaintance with the applicant or his addresses during the period in question.

The record reveals that the applicant arrived at John F. Kennedy International Airport, Jamaica, New York, on February 15, 1989, via Air Afrique Flight [REDACTED]. The applicant presented himself for immigration inspection with a Senegalese passport issued in Dakar, Senegal, on January 2, 1989. The passport contained a United States nonimmigrant B-1/B-2 visitor's visa issued at Dakar, Senegal, on January 11, 1989, valid for one entry into the United States for a two-week visit. The applicant told the immigration inspector that he had come to New York to search for his father, because he claimed that he had been informed that his father was in this country. The applicant stated in a sworn statement under penalty of perjury that he was supposed to contact [REDACTED] and he would help the applicant find his father. When [REDACTED] was contacted via telephone, he stated that he knew nothing about the applicant, his father, or why the applicant was coming to the United States. When the applicant was questioned as to why [REDACTED] knew nothing of his arrival in the United States, he merely stated that when he met [REDACTED], he would "explain the situation to him."

Contrary to the applicant's claim during his legalization interview that he left the United States in January 1989 and returned to the United States in February 1989, his Air Afrique plane ticket, which is contained in the record of proceedings, reveals a Dakar/New York/Dakar itinerary indicating that he was routed to New York on February 15, 1989, via Air Afrique Flight [REDACTED], and was scheduled to return to Dakar, Senegal, on March 1, 1989, via Air Afrique Flight [REDACTED]. The applicant did not travel from New York to Senegal in January 1989 and return to New York in February 1989 as he claimed under penalty of perjury on the Form I-687 and during his legalization interview. The applicant was coming to New York in February 1989 with a scheduled return in March 1989.

On June 5, 1992, [REDACTED] a United States citizen, filed a Form I-130, Petition for Alien Relative, on the applicant's behalf seeking to classify him as the spouse of a United States citizen. On that same day the applicant filed a Form I-485, Application for Permanent Residence. In support of the Form I-130 petition, the applicant submitted a purported Senegalese divorce decree indicating that he was granted a divorce from his wife in Senegal, [REDACTED], on January 12, 1991. The original names and dates on this document appear to have been altered and the applicant's name and [REDACTED] name substituted.

On August 26, 1992, the applicant and [REDACTED] appeared at the New York District Office for the I-130 interview. The notes of the interviewing officer indicate that he expressed doubt regarding the authenticity of the Senegalese divorce decree and recommended that a second interview be scheduled. The applicant and [REDACTED] were scheduled for a second interview on December 6, 1993, but they failed to appear for the second interview as scheduled. The Form I-130 was denied on January 31, 1995, because the applicant and [REDACTED] failed to appear for the second interview as scheduled, and the Form I-485 was denied on March 28, 1995, because the Form I-130 had been denied and the applicant was not eligible to apply for adjustment of status to permanent residence.

The claim made on the Form I-130 that the applicant had divorced his wife in Senegal contradicts his statement during his legalization interview that he had a wife and four children in Senegal whom he has been supporting.

On appeal the applicant reiterates his claim that he entered the United States from Canada in 1981. He claims that he is unable to provide photocopies of his passport, Senegalese identification document, or Canadian visitor's visa because he lost those documents when he crossed the United States-Canadian border. The applicant submits copies of documents previously submitted in support of his application. He also submits his Social Security earnings statement dated April 3, 2006. The Social Security earnings statement does not reflect any income earned by the applicant in the United States prior to 1992. Therefore, this document does not corroborate the applicant's claim of continuous residence in the United States during the requisite period.

On June 7, 2006, 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 advanced conflicting and fraudulent claims regarding his dates of entry and residence in the United States.

The AAO's June 11, 2007 notice stated:

At your interview with a CIS officer on January 5, 2006, you claimed that you entered the United States from Canada without inspection in April 1981. You further stated that you were absent from the United States from November 1986 to January 1987, from October 1987 to December 1987, and from January 1989 to

February 1989. You indicated that you were currently married, and your wife and four children were all in Senegal. You signed the interview statement swearing that it was a true and complete record of your interview.

The record reveals that you arrived at John F. Kennedy International Airport, Jamaica, New York, on February 15, 1989, via Air Afrique Flight [REDACTED]. You presented yourself for immigration inspection with a Senegalese passport issued in Dakar, Senegal, on January 2, 1989. The passport contained a United States nonimmigrant B-1/B-2 visitor's visa issued at Dakar, Senegal, on January 11, 1989, valid for one entry into the United States for a two-week visit. You told the immigration inspector that you had come to New York to search for your father, because you claimed you had been informed that he was in this country. You stated in a sworn statement under penalty of perjury that you were supposed to contact [REDACTED] and he would help you find your father. When [REDACTED] was contacted via telephone, he stated that he knew nothing about you, your father, or why you were coming to the United States. When you were questioned as to why [REDACTED] knew nothing of your arrival in the United States, you merely stated that when you met him, you would "explain the situation to him."

Contrary to your claim during your legalization interview that you left the United States in January 1989 and returned to the United States in February 1989, your Air Afrique plane ticket, which is contained in the record of proceedings, reveals a Dakar/New York/Dakar itinerary indicating that you were routed to New York on February 15, 1989, via Air Afrique Flight [REDACTED], and you were scheduled to return to Dakar, Senegal, on March 1, 1989, via Air Afrique Flight [REDACTED]. You did not travel from New York to Senegal in January 1989 and return to New York in February 1989 as you claimed under penalty of perjury on the Form I-687 and during your legalization interview. You were coming to New York in February 1989 with a scheduled return in March 1989.

On June 5, 1992, [REDACTED], a United States citizen, filed a Form I-130, Petition for Alien Relative, on your behalf seeking to classify you as the spouse of a United States citizen. On that same day you filed a Form I-485, Application for Permanent Residence. In support of the Form I-130 petition, you submitted a purported Senegalese divorce decree indicating that you were granted a divorce from your wife in Senegal, [REDACTED] on January 12, 1991. The original names and dates on this document appear to have been altered and your name and [REDACTED]'s name substituted.

On August 26, 1992, you and [REDACTED] appeared at the New York District Office for your I-130 interview. The notes of the interviewing officer indicated that he expressed doubt regarding the validity of the Senegalese divorce decree and recommended that a second interview be scheduled. You were scheduled for a

second interview on December 6, 1993, but you and [REDACTED] failed to appear for the second interview as scheduled. The Form I-130 was denied on January 31, 1995, because you and [REDACTED] failed to appear for your second interview as scheduled, and the Form I-485 was denied on March 28, 1995, because the Form I-130 had been denied and you were not eligible to apply for adjustment of status to permanent residence.

The claim made on the Form I-130 that you had divorced your wife in Senegal contradicts your statement during your legalization interview that you have a wife and four children in Senegal whom you have been supporting.

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). The above derogatory information noted above raises serious questions of credibility regarding your eligibility for temporary resident status.

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 filing the instant application and advancing false and conflicting statements under penalty of perjury, you appear to have sought to procure a benefit provided under the Act through fraud and willful misrepresentation of a material fact. Unless you are able to provide independent and objective evidence to overcome, fully and persuasively, our above findings, the AAO will dismiss your appeal and enter a formal finding of fraud into the record. This finding of fraud will be considered in any future proceeding where admissibility is an issue. While you may choose to withdraw your appeal, this will not prevent a finding that you have sought to procure immigration benefits through fraud and willful misrepresentation of a material fact.

If you choose to contest the AAO's findings, you must offer substantial evidence from credible sources addressing, explaining, and rebutting the discrepancy 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 15-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 432 393, in your response.

Because the derogatory information concerns falsified documents, we will 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 self-written explanation.

The record does not contain a response from the applicant.

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 signed the Form I-687, thereby certifying under penalty of perjury that "this application and the evidence submitted with it are all true and correct."

By filing the instant application and advancing false and contradicting claims regarding his dates of entry and residence in the United States, the applicant has sought to procure a benefit provided under the Act through the use of fraud and the willful misrepresentation of material facts. Because the applicant has failed to provide independent and objective evidence to overcome, fully and persuasively, our finding regarding the applicant's claim of entry into the United States prior to January 1, 1982, and continuous residence in the United States during the requisite period, we affirm our finding of fraud. In addition, an applicant for temporary resident status under section 245A of the Act, 8 U.S.C. § 1255a, must establish that he or she is admissible as an immigrant. Because of his attempt to procure a benefit under the Act through fraud, we find that the applicant is inadmissible under section 212(a)(6)(C) of the Act.

A few errors or minor discrepancies are not reason to question the credibility of an alien or an employer seeking immigration benefits. *See, e.g., Spencer Enterprises Inc. v. U.S.*, 345 F.3d

683, 694 (9th Cir., 2003). However, anytime an application includes numerous errors and discrepancies, and the petitioner fails to resolve those errors and discrepancies after CIS provides an opportunity to do so, those inconsistencies will raise serious concerns about the veracity of the petitioner's assertions. In this case, the discrepancies and errors catalogued above lead the AAO to conclude that the evidence of the beneficiary's eligibility is not credible. Accordingly, the applicant has not established his eligibility for temporary resident status.

Regarding the instant application, the applicant's failure to submit independent and objective evidence to overcome the preceding derogatory information seriously compromises the credibility of the applicant and the remaining documentation. 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 applicant has, therefore, failed to establish that he resided in continuous unlawful status in the United States from before January 1, 1982 through May 4, 1988, as required under section 245A(a)(2)(A) of the Act, or that he was continuously physically present in the United States from November 6, 1986 through May 4, 1988, as required by section 245A(a)(3)(a) of the Act. In addition, because he has attempted to procure a benefit under the Act through the willful misrepresentation of material facts, he is inadmissible under section 212(a)(6)(C) of the Act. Given this, he is ineligible for temporary resident status under section 245A of the Act.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

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.