



U.S. Citizenship
and Immigration
Services

LL

PUBLIC COPY

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

[REDACTED]

FILE:

[REDACTED]

Office: Chicago

Date: JUL 17 2007

MSC 04 358 11088

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:

[REDACTED]

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, Chicago, Illinois, 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, counsel contends that CIS failed to notify the applicant of his right to seek the appointment of a Special Master. Counsel reiterates the applicant's claim of continuous residence in this country for the requisite periods and asserts that the affidavits submitted by the applicant are sufficient to establish 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 September 22, 2004. 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 “Chicago, Illinois” from September 1981 to February 1985; at “Chicago, Illinois” from February 1985 to January 1987; and, at “Chicago, Illinois” from January 1987 to August 1991. At part #33, where applicants were asked to list all employment since initial entry into the United States, the applicant indicated that he was self-employed as a street peddler in Chicago, Illinois, from October 1981 to January 1989.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant submitted an affidavit dated November 30, 1991, from [REDACTED] stating he had known the applicant since 1981 because he and the applicant were neighbors. However, he does not provide his address and the applicant's address during the period when they were neighbors or the inclusive dates of the period during which he and the applicant were neighbors.

The applicant also submitted an affidavit dated December 19, 1990, from [REDACTED] stating that he had known the applicant for three years. However, he did not provide any information regarding the basis of his acquaintance with the applicant or the applicant's addresses in the United States during the period of their acquaintance. Furthermore, [REDACTED] apparently met the applicant sometime in 1987 and cannot attest to the applicant's continuous residence in the United States throughout the requisite period.

The applicant included an affidavit from [REDACTED] stating that he had known the applicant since November 1981 because he and the applicant were "workers at the same place." However, [REDACTED] did not provide the applicant's addresses in the United States during the period of their acquaintance or the name of the place of employment where he and the applicant purportedly worked together. It is noted that the applicant claimed on the Form I-687 that he was a street peddler in Chicago, Illinois, from October 1981 to January 1989. Since the applicant was a street peddler during that period, [REDACTED] could not have possibly worked with the applicant at a regular place of employment during the period in question. This discrepancy in the applicant's claimed employment raises questions of credibility regarding the applicant's claim.

The applicant also submitted three original mailing envelopes postmarked in Pakistan on March 17, 1982, May [day illegible] 1985, and November 16, 1987. The envelope postmarked November 16, 1987 bears a postage stamp with a value of five rupees that contains the image of three individuals with death head masks and the legend, "Drug Abuse Society's Menace." The legend at the bottom of the stamp reads, "1989 SAARC Year Against Narcotics." This stamp is listed at page 19 of Volume 5 of the *2007 Scott Standard Postage Stamp Catalogue* and is listed as catalogue number [REDACTED]. The catalog lists the date of issue of this stamp as December 8, 1989.

The envelope postmarked March 17, 1982 bears a postage stamp with a value of five rupees that contains an engraving of the tomb of [REDACTED]. This stamp is listed at page 12 of Volume 5 of the *2007 Scott Standard Postage Stamp Catalogue* and is listed as catalogue number [REDACTED]. The catalogue lists the date of issue for this stamp as 1981. Upon examination of the postmark under magnification, it appears that the original postmark has been altered with ink by hand to read March 17, 1982.

The envelope postmarked [illegible] May 1985 bears the same postage stamp as the envelope postmarked March 17, 1982. The stamp, which features an engraving of the tomb of Ibrahim [REDACTED] is listed at page 12 of Volume 5 of the *2007 Scott Standard Postage Stamp Catalogue* and is listed as catalog number [REDACTED]. The catalog lists the date of issue of this

stamp as 1981. Upon examination of the postmark under magnification, it appears that the original postmark has been altered by with ink by hand to read [illegible] May 1985.

On appeal counsel contends that the district director failed to notify the applicant of his right to seek the appointment of a Special Master.

As the applicant's Form I-687 application was denied on the basis of his failure to establish continuous residence in the United States during the requisite period, rather than his failure to establish a claim to class membership, the district director's decision is not subject to the review of a Special Master. CSS Settlement Agreement, paragraph 9, page 5, Newman Settlement Agreement, paragraph 9, pages 7-9. Therefore, counsel's contention that CIS failed to follow the proper procedures in denying the applicant's Form I-687 application as specified in the CSS/Newman Settlement Agreements cannot be accepted.

Counsel's statements on appeal regarding the sufficiency of the evidence submitted by the applicant in support his claim of continuous residence in this country for the requisite period have been considered. However, the three affidavits submitted by the applicant relating to his residence in the United States from prior to January 1, 1982 are not sufficient to establish the applicant's claim because they lack sufficient detail and contain little verifiable information.

Furthermore, the fact that the postmarks on the envelopes postmarked March 17, 1982 and May [illegible] 1985 appear to have been altered with ink by hand, combined with the fact that the envelope postmarked November 16, 1987, bears a stamp that was not issued until two years after the postmark date, establishes that the applicant utilized documents in a fraudulent manner to establish his residence in the United States during the requisite period.

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 indicates that the applicant has 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) 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).

By submitting the Form I-687 and submitting the fraudulent evidence described above, 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 14, 2007, informing them that it was the AAO's intent to dismiss the applicant's appeal based on the fact that he submitted fraudulent documents 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 submitted fraudulent documents in an attempt to establish his eligibility for temporary resident status 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 submitted fraudulent documents 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

submitting fraudulent documents in support of his claim, the applicant has sought to procure a benefit provided under the Act through fraud and willful misrepresentation of material facts. Because the applicant has failed to provide any independent objective evidence to overcome, fully and persuasively, our finding that he attempted to obtain an immigration benefit through fraud and 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 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.