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U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE: [Redacted]
MSC 05 221 11289

Office: NEW YORK

Date: JUL 26 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:

[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, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director determined that 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 (INS), now Citizenship and Immigration Services (CIS), in the original legalization application period between May 5, 1987 to May 4, 1988. Therefore, the district 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 denied the application.

On appeal, the applicant asks the director to reconsider her decision, and submits an affidavit.

An alien applying for adjustment to temporary resident status must establish that he or she entered the United States before January 1, 1982, and that he or she has resided continuously 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 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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to establish continuous residence 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 from 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 on May 9, 2005. The applicant indicated at block #30, where applicants are instructed to list all residences since initial entry into the United States that he resided at “[redacted] New York, New York” from November 1981 to January 1985 and at “[redacted] New York, New York” from February 1985 to March 1993. He did not submit any evidence in support of his claim of continuous residence in the United States during the requisite period.

On August 1, 2005, the applicant appeared at the New York District Office for his legalization interview. The applicant stated under oath during his legalization interview that he was a practicing Muslim and had been since childhood. He further stated, “I have never practiced any other religion. I married by the Muslim tradition in my country.”

The applicant presented his Gambian passport issued in Gambia on January 20, 1988, valid until January 20, 1993. This passport contained a United States nonimmigrant B-1 visitor's visa issued by the United States Consul in Banjul, Gambia, on February 8, 1988, valid for one entry until May 7, 1988. The passport page bearing the United States visa bears an INS admission stamp indicating that the applicant was admitted to the United States at New York, New York, on February 24, 1988, as a B-1 nonimmigrant visitor.

The applicant also provided a letter dated July 31, 2005, from [REDACTED], Bronx, New York, stating that she had known the applicant for twenty-five years. [REDACTED] stated in her letter that the applicant went to church every Sunday and prayed.

On October 11, 2005, the district director issued a notice informing the applicant of her intent to deny the application because he had not submitted sufficient evidence to establish continuous residence in the United States from prior to January 1, 1982 through May 4, 1988. The district director noted that, although the applicant stated under oath during his legalization interview that he was a Muslim and had never practiced any other religion, the applicant submitted a letter from Dorothy Burry stating that he went to church every Sunday and prayed.

The district director stated that the applicant had previously filed an asylum application with INS under alien registration number [REDACTED].¹ The district director noted that the applicant indicated on the asylum application that he had a wife in Gambia, [REDACTED], a son [REDACTED], born in Gambia on August 12, 1984, a son [REDACTED], born in Gambia on December 13, 1985, a son [REDACTED] born in Gambia on March 9, 1986, and a son [REDACTED] born in Gambia in January 1988. The director further noted that the applicant indicated on the asylum application and accompanying Form G-325A Biographic Information that he drove a taxi in Gambia for about four years between 1980 and 1983, and then worked at his father's store in Gambia until February 1988. The district director stated that it was unlikely that the applicant was residing in the United States throughout the requisite period since the applicant stated during his legalization interview that his wife had never come to the United States and children were born to him in Gambia in 1984, 1986, and 1988.

Additionally, the director noted that the applicant stated during his asylum interview that he had been a taxi driver in his country for about four years, from 1980 to 1983, and that he had worked in his father's store until February 1988. The district director stated the applicant's statements during the asylum interview contradict his current claim of continuous residence in the United States from prior to January 1, 1982 through May 4, 1988. The district director stated that these contradictions and discrepancies raised serious questions regarding the credibility of the applicant's claim of continuous residence in the United States from prior to January 1, 1982, to May 4, 1988. The district director granted the applicant 30 days to submit additional evidence in support of his application. The record does not contain a response from the applicant.

¹ The applicant's asylum record has subsequently been consolidated into the current record of proceeding, [REDACTED]

On December 19, 2005, the district director denied the application because the applicant failed to establish continuous residence in the United States from prior to January 1, 1982 to May 4, 1988. The district director noted that the applicant failed to respond to the notice of intent to deny dated October 11, 2005.

On appeal, the applicant states that he did respond to the notice of intent to deny. The applicant submits a photocopy of an affidavit he claims he submitted in response to the notice of intent to deny. [REDACTED] of New York, New York, states in his affidavit dated November 7, 2005, that he first met the applicant in 1981. [REDACTED] explains that he worked as a bike messenger in New York, New York, at that time and often saw the applicant selling merchandise on the corner of [REDACTED] and [REDACTED]. [REDACTED] states that he and the applicant spoke to each other every day and finally became friends.

As noted by the director, the applicant previously applied for asylum and for withholding of removal. The record contains an asylum application signed by the applicant on May 15, 1991. The applicant indicated on this asylum application that he was married but living apart from his wife and that he had two children, [REDACTED], male, born in Gambia on August 2, 1984, and [REDACTED], male, born in Gambia on April 4, 1988. The applicant based his asylum claim on his "social group membership." Specifically, the applicant stated, "I am OLAF, a targeted ethnic group." The applicant indicated on the Form G-325A Biographic Information that accompanied his asylum application that he worked as a salesman in a store in Gambia from 1985 to 1988 and as a taxi driver in New York, New York, from 1989 to May 15, 1991, the date he signed the asylum application. The applicant's statement that he worked as a store salesman in Gambia from 1985 to 1988 contradicts the applicant's claim on the Form I-687 that he was a self-employed vendor in New York, New York from November 1982 to June 1988.

The applicant indicated on the Form G-325A dated May 15, 1991, that he had resided at "[REDACTED] [REDACTED] 7., New York, New York" since February 1988. This statement contradicts the applicant's statement on the Form I-687 that he resided at "[REDACTED], New York, New York" from February 1985 to March 1993.

The record contains a separate asylum application signed by the applicant on September 10, 1997. The applicant indicated on this application that he was divorced and had two male children, [REDACTED] born in Gambia on April 4, 1988 and [REDACTED], born in Gambia on August 22, 1984. At block #33 of that asylum application, where applicants are instructed to list organizations of which they were a member in their home country, the applicant stated, "I am a member of the Evangelical Christian Church and it's associated [REDACTED]'s organization. I was also a member during my youth of an area related organization that tried through peaceful means to bring about changes that would benefit the population as a whole." At block #37, where applicants are instructed to explain why conditions in their country affect their personal freedom more than the rest of that country's population, the applicant stated, "[w]hen I proclaimed my religion by ministering, I became a part of the section that would be excluded from having basic

rights and the protection that is needed when you are a member of a persecuted religious faith. The government acts as if you are a criminal solely based on your religious faith.” This statement contradicts the applicant’s statement in other proceedings that he is a Muslim.

The applicant indicated on the Form G-325A that accompanied this asylum application that he had resided at “[REDACTED], New York, New York” from February 1988 to January 1991 and at “[REDACTED], Washington, D.C.” since January 1991. This statement contradicts the applicant’s statement on the Form I-687 that he resided at “[REDACTED] New York, New York” from November 1981 to January 1985 and “[REDACTED] New York, New York” from February 1985 to March 1993. Furthermore, the applicant did not indicate on the Form I-687, the Form I-485, or the other two asylum applications contained in the record of proceeding that he ever resided in Washington, D.C.

The applicant appeared for his asylum interview on September 10, 1997. The applicant stated during this interview that he was a Muslim and had been since birth.² This statement contradicts the applicant’s statement in a separate asylum application that he was a member of the Evangelical Christian Church and had been persecuted in Gambia because of his religious faith.

The record contains a third asylum application signed by the applicant on March 23, 1998. The applicant indicated on this application that he had four children, “[REDACTED] born in Gambia on August 12, 1984, “[REDACTED] born in Gambia on December 13, 1985, “[REDACTED] born in Gambia on March 9, 1986, and “[REDACTED] born in Gambia on July 28, 1988. The applicant indicated on this asylum application that he was seeking asylum because his father, who was “deeply involved in politics” and was “a wealthy businessman,” died in 1987 and the government tried to take away his father’s business and houses because his father had defaulted on a loan he had taken from the government. The applicant claimed that his name appeared on the ownership papers of his father’s business and houses because he was the first-born son. The applicant further claimed that the government authorities would torture or kill him if he returned to Gambia because of his father’s defaulted loan. The applicant stated on this application that he didn’t belong to any political party or organization. These statements contradict the applicant’s previous statements that he was seeking asylum because he was an Evangelical Christian and had been persecuted because of his religious faith and that he was a member of a targeted ethnic organization.

² On September 10, 1997, the applicant’s asylum application was denied because he had not established a well-founded fear of future persecution. The applicant was referred for a removal hearing before an immigration judge. On March 12, 1999, an Immigration Judge in New York, New York, granted the applicant the privilege of voluntary departure to Gambia on or before May 11, 1999, with an alternate order of removal if the applicant failed to comply with the grant of voluntary departure. The applicant never departed the United States in compliance with the Immigration Judge’s grant of voluntary departure.

It is noted that the record contains an affidavit from the applicant dated March 18, 1997, submitted in conjunction with a Form I-131, Application for Travel Document, in which the applicant stated that he was a devout Muslim and wanted to travel to Mecca, Saudi Arabia, to participate in the Muslim religious pilgrimage known as "haj." This statement contradicts his previous claim on one of his asylum applications that he was persecuted in Gambia because he was an evangelical Christian.

On January 15, 2003, the applicant filed a Form I-485, Application to Register Permanent Residence or Adjust Status, under the Legal Immigration Family Equity (LIFE) Act. The applicant claimed on that application that he had a wife and three children in Gambia. He listed his children's names and dates of birth as [REDACTED], born in Gambia on September 10, 1986, [REDACTED], born in Gambia on August 12, 1984, and [REDACTED] born in Gambia on January 11, 1988. The Director of the Missouri Service Center denied the Form I-485 on February 25, 2004, because the applicant failed to establish that he had filed a written claim for class membership in any of the requisite legalization class-action lawsuits prior to October 1, 2000.

The applicant has previously claimed to be a "devout Muslim" and a member of the Evangelical Christian Church in Gambia. He has based asylum claims on persecution because he was an Evangelical Christian, because the government was trying to force him to pay off his father's defaulted government loan, and because he was a member of a targeted minority group, the Olaf. He has listed four different versions of the names and dates of birth of his children. He has claimed to be both married, married but living apart from his wife, and divorced in his various applications. Additionally, as previously stated, there are numerous contradictions in the applicant's claimed dates and places of residence in the United States.

Furthermore, the applicant has previously indicated on his asylum applications that he first entered the United States on February 24, 1988. Prior to the filing of his Form I-485 LIFE application and his Form I-687, the applicant has never claimed to have lived in the United States prior to February 24, 1988. The record contains a photocopy of a visa page from the applicant's Gambian passport bearing his nonimmigrant B-1 visa and an INS admission stamp indicating that the applicant was admitted to the United States on February 24, 1988 as a nonimmigrant B-1 visitor. This United States admission stamp dated February 24, 1988 would appear to corroborate the applicant's prior claims on his asylum applications that he first entered the United States on that date.

On appeal, he submits an affidavit from A [REDACTED] r saying that he first met the applicant in 1981, when he worked as a bike messenger and the applicant was selling merchandise on the corner of [REDACTED] t and [REDACTED] New York, New York. This statement contradicts the applicant's statement on the Form I-687 that he was a self-employed street vendor selling merchandise on the corner of [REDACTED] and S [REDACTED] e, New York, New York from November 1982 to June 1988.

The applicant has not provided any explanation for the numerous contradictions and discrepancies noted above. These contradictions and discrepancies raise serious doubts regarding the credibility of the applicant's claim of continuous residence in the United States throughout 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 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).

By submitting the Form I-687 and advancing fraudulent and contradictory claims regarding his dates of entry and residence in the United States, his marital status, the names and ages of his children, his reasons for seeking asylum in the United States, and his employment history in the United States and in Gambia, 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 the applicant on June 13, 2007, informing him that it was the AAO's intent to dismiss his appeal based on the fact that he advanced fraudulent and contradictory claims 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. 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 willful misrepresentations of material facts 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 made willful misrepresentations of material facts 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 these claims in support of his application, 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 independent any 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. The applicant failed to establish that he is admissible to the United States as required by section 245A(a)(4)(A) of the Act. 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.