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**U.S. Citizenship  
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Services**

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FILE:

MSC-05-235-16215

Office: Cherry Hill

Date:

JUN 06 2007

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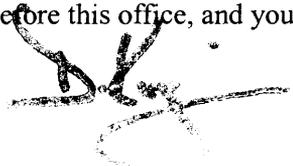
Applicant:

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

ON BEHALF OF APPLICANT:

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, Cherry Hill, New Jersey, 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, counsel for the applicant indicated that a brief would be submitted within thirty (30) calendar days. However, counsel failed to submit a brief or any other additional evidence to overcome the director's decision. Counsel stated in the Notice of Appeal that, "[a]ailable [sic] evidences contradict with the District officer's interpretation (i.e. entry & exit dates per passport)." Counsel failed to elaborate further on this assertion, therefore, the alleged contradictions are unknown. Counsel stated in the Notice of Appeal that the director refused to grant additional time for counsel to gather evidence. This statement is inconsistent with the applicant's record, which shows that the applicant was issued a notice of intent to deny on February 16, 2006 and was given thirty (30) days to respond to the notice. On March 13, 2006, counsel informed the director had he had recently been retained by the applicant and requested an extension. The director provided counsel with a thirty (30) day extension from the date counsel's Form G-28, Notice of Entry of Appearance as Attorney or Representative, was signed by the applicant. The extension of time to respond to the notice of intent to deny was granted until March 29, 2006. On March 29, 2006, counsel requested another extension to respond to the notice of intent to deny. This second request was denied by the director. It should be noted that counsel did not provide a rebuttal statement and/or additional evidence in response to the notice of intent to deny.

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 applicant filed an I-687 application and an I-687 Supplement, CSS/Newman Class Membership Worksheet, with CIS on May 19, 2005. Part 30 of this applicant requests the applicant to provide all of his residences in the United States since his first entry. The applicant reported that he resided at [REDACTED], Bronx, NY from March 1981 until January 1990. The applicant has provided written statements from his friends and family to corroborate his continuous residence in the United States. The regulation at 8 C.F.R. § 245a.2(d)(6) provides that, “[t]he sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility.” The weight to be given to affidavits and other written statements depends on the totality of the circumstances. These documents are evaluated based on the author’s specific, personal knowledge of the applicant’s whereabouts during the time period in question, and documentation to verify the author’s credibility such as a copy of his/her identity document. The written statements submitted by the applicant fail to satisfy the stated criteria because they lack sufficient detail.

The applicant submitted a notarized letter from his cousin, [REDACTED]. This letter provides, “[m]y cousin, [REDACTED] resides at [REDACTED] Pemberton, NJ [REDACTED]. We know him very well. He has been in the United States since 1981.” This letter contains two apparent deficiencies. The letter fails to provide specific information on [REDACTED] personal knowledge of the applicant’s continuous residence during the requisite period. The letter also fails to provide the applicant’s residential address upon his entry in 1981 and thereafter.

The applicant submitted a notarized letter from his uncle, [REDACTED]. This letter provides, “I am [REDACTED] and living [sic] at [REDACTED] San Jose, California [REDACTED]. . . . I personally know [REDACTED] residents [sic] of [REDACTED] Pemberton, New Jersey [REDACTED]. He is my nephew and we lived together from March 1984 To [sic] May 1985.” This letter contains deficiencies similar to the letter from [REDACTED]. The letter fails to provide specific information on [REDACTED] personal knowledge of the applicant’s continuous residence during the requisite period. The letter also fails to provide the address that [REDACTED] claims he resided at with the applicant.

The applicant submitted a notarized letter from [REDACTED]. This letter provides, “I personally [sic] known [sic] to [REDACTED] resident of [REDACTED], Pemberton, New Jersey [REDACTED] from 1986. We lived together from Jan. 1986 to June 1987 and we are still good friends.” This letter contains deficiencies identical to the letter issued by [REDACTED]. The letter fails to provide specific information on [REDACTED] personal knowledge of the applicant’s continuous residence during the requisite period. The letter also fails to provide the address that [REDACTED] claims he resided at with the applicant.

The applicant submitted a notarized “Affidavit of Absence From the United States” from [REDACTED] [REDACTED] dated April 10, 1990. This “fill in the blank” written statement provides that the applicant was absent from the United States from July 3, 1987 until July 30, 1987 due to a family emergency. This statement contains two apparent deficiencies. The statement fails to provide specific information on [REDACTED] personal knowledge of the applicant’s absence from the

United States. The statement also fails to contain any documentation to confirm Mr. Uraoof's identity.

Consequently, these documents fail to establish by a preponderance of the evidence the applicant's continuous residence in the United States during the requisite period. These documents can only be given minimal weight because they lack significant detail. 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 absence of sufficiently detailed supporting documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of his claim.

The applicant indicated on his I-687 application that he has resided in the United States since March 1981. The applicant's record shows that he was apprehended by Border Patrol on September 2, 1989 at Chateaugay, NY. The Border Patrol Agent's Record of Deportable Alien narrative provides that the applicant "arrived in Canada by air 8/23/89 at Montreal, Quebec using a fraudulent passport that was returned to India by a friend. Subject was claiming refugee status and was scheduled for a hearing before Canada Immigration 10/13/89. Subject was residing at [REDACTED] while in Canada." This narrative is corroborated by a Canadian government document in the applicant's file, entitled "Notice to Appear for an Inquiry/Hearing." This notice, dated August 25, 1989, provides that the applicant was scheduled for a hearing on October 13, 1989 at the Canada Immigration Center. This notice also provides the applicant's address in Canada as [REDACTED]

The record shows that the applicant was placed in deportation hearings before the Immigration Judge in Boston, Massachusetts. On January 9, 1990, the applicant was ordered deported in absentia for failing to appear at his hearing. The information contained in the applicant's record draws into question whether he first entered the United States in March 1981, or whether he first entered the United States on September 2, 1989, and then remained in the United States after being deported in absentia.

The applicant previously filed a Form I-687 application, dated April 12, 1990, to apply for class membership. This application was signed by the applicant under penalty of perjury certifying that the information contained in the application is true and correct. Part 35 of this application requests the applicant to list his absences from the United States since his entry. The applicant failed to provide information regarding his residence in Canada from August 23, 1989 until September 2, 1989. The applicant indicated on this application that he had one absence from the United States from June 23, 1987 until July 20, 1987 to visit his family in India. The applicant's current, I-687 application, filed pursuant to the CSS/Newman Settlement Agreements, also fails to provide any information on his residence in Canada from August 23, 1989 until September 2, 1989. The applicant instead indicated on this application that from July 3, 1987 until July 30, 1987 he visited his family and friends in Canada. The applicant was given the opportunity to provide an explanation for these omissions in the director's notice of intent to deny, however he

failed to provide any type of rebuttal. The notice of intent to deny provides that, “[a]t the time of your interview on February 16, 2006 you said you were not in Canada in 1989, and that you had lied to the officer who apprehended you.” The applicant’s testimony that he was not in Canada in 1989 and that he lied to the Border Patrol Agent, is inconsistent with the Canadian government’s notice for the applicant to appear for an inquiry/hearing on October 13, 1989. Doubt cast on any aspect of the evidence may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an 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 (BIA 1988). The applicant’s failure to disclose information on his residence in Canada, from August 23, 1989 until September 2, 1989, undermines his credibility and the credibility of his claimed continuous residence in the United States since March 1981.

The director’s notice of intent to deny, dated February 16, 2006, and denial notice, dated March 29, 2006, notified the applicant that he is inadmissible to the United States pursuant to his failure to disclose his September 2, 1989 entry and subsequent apprehension. The applicant has since failed to provide a statement of rebuttal and/or additional evidence to address this issue. Section 212(a)(6)(C) of the Act, 8 U.S.C. § 1182(a)(6)(C), provides that, “[a]ny 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.” Thus, the applicant has rendered himself inadmissible to the United States for his willful misrepresentation of a material fact.

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. 8 C.F.R. § 245a.2(d)(5). Given the applicant’s reliance upon documents with minimal probative value, he has failed to establish continuous residence in an unlawful status 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. Furthermore, the applicant’s willful misrepresentation of a material fact renders him inadmissible to the United States pursuant to section 212(a)(6)(C) of the Act, 8 U.S.C. § 1182(a)(6)(C). The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this 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 misrepresented a material fact in an effort to mislead Citizenship and Immigration Services on elements material to his eligibility for a benefit sought

under the immigration laws of the United States. Accordingly, the applicant is inadmissible under section 212(a)(6)(C) of the Act.