

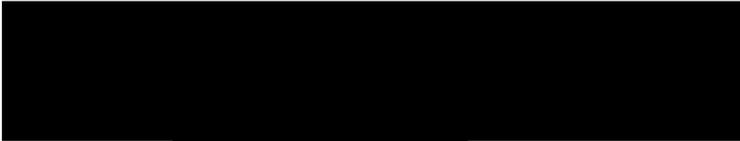


U.S. Citizenship
and Immigration
Services

PUBLIC COPY

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

41



FILE:

MSC-05-197-14516

Office: LOS ANGELES

Date: JUN 20 2007

IN RE:

Applicant:



PETITION: 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. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if the matter 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 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 or the Service (now Citizenship and Immigration Services or 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 maintains that he entered the United States on June 17, 1981 and has continuously resided in the United States thereafter. The applicant asserts that he received inadequate assistance of counsel when preparing his application for asylum and his application for cancellation of removal. The applicant claims that counsel's advice caused him to list his first date of entry on these applications as June 1991 instead of June 1981.

An applicant for temporary residence 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. § 1225a(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; and 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.

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 filed a Form I-687, Application for Status as a Temporary Resident, and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, with CIS on April 15, 2005. The applicant signed his Form I-687 application under penalty of perjury certifying that the information contained in the application is true and correct. At part #30 of the Form I-687 application, applicants are asked to list all residences in the United States since their first entry. The applicant listed his first address in the United States as [REDACTED] and indicated that he resided at this address from May 1985 until June 1986. The applicant has not listed any other addresses prior to this date. Similarly, at part #33 of the application form, the applicant showed his first employment in the United States to be with [REDACTED] Farm Labor Contractor, [REDACTED], Firebaugh, California 93622. His application states that he was employed in this position from May 1985 until May 1986. The applicant has not listed any other employment information prior to this date. The fact that the applicant failed to list any residences and employment in the United States from prior to January 1, 1982 until May 1985 indicates that he was not living in the United States during this period. Furthermore, the applicant has not submitted any corroborating documentation to support his claim of continuous residence in the United States prior to May 1985.

On appeal, the applicant filed a brief which provides that he was employed with [REDACTED] Farm Labor Contractor from November 1981 through December 1988. The dates of employment he has summarized in his brief are materially inconsistent with evidence he submitted in support of his Form I-

687 application. The applicant's Form I-687 application contains a letter from [REDACTED], president of [REDACTED] Farm Labor Contractor, which provides, "[REDACTED] was employed by our farm labor contracting firm from May 1, 1985 to May 1, 1986 for a total of one hundred five (105) days." Moreover, the applicant has submitted as evidence of his employment a Form I-705, Affidavit Confirming Seasonal Agricultural Employment, which states the applicant's dates of employment with [REDACTED] Farm Labor as May 1, 1985 until May 1, 1986. Both the applicant and [REDACTED] the affiant, have signed this application under penalty of perjury affirming that this information is true and correct to the best of their knowledge and belief. The applicant's brief indicates that he has submitted another employment verification letter from this employer. However, this document has not been received by the AAO as of the date of this decision. Even if the applicant submitted an amended letter from Jose Ruiz, the numerous inconsistencies found in his record would detract from its credibility. 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's brief also states that he resided at [REDACTED] from June 1981 until October 1981 and [REDACTED] Mendota, California, 93640, from November 1981 until December 1988. However, this information is materially inconsistent with the applicant's Form I-687 application, which provides that he resided at [REDACTED] Mendota, California 93640, from May 1985 until June 1986 and [REDACTED] Garden Grove, California 92644, from July 1986 until May 1991. It is also materially inconsistent with other documentation contained in the applicant's record. On May 10, 2002, the applicant filed a Form EOIR-42B, Application for Cancellation of Removal and Adjustment of Status, during a removal hearing before the Immigration Court. This application provides that the applicant first arrived in the United States on June 17, 1991. The applicant indicated on this application form that he has not traveled to the United States on any other dates. Similarly, on November 15, 2001, the applicant filed a Form I-589, Application for Asylum, which provides his first entry into the United States as June 17, 1991. The applicant indicated on this application that he had not previously entered the United States. The applicant signed this application under penalty of perjury certifying that the information contained in the application is true and correct. During the applicant's asylum interview on March 1, 2002, he again signed this application, under oath before an immigration officer.

The AAO issued a notice to the applicant on May 14, 2007 informing him that it was the AAO's intent to dismiss his appeal based upon the fact that he has made material misrepresentations in an attempt to establish his residence within the United States for 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, 8 U.S.C. § 1182(a)(6)(C), as a result of his actions.

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.

The applicant was granted thirty days (plus three days for mailing) to provide substantial evidence to overcome, fully and persuasively, these findings. On June 14, 2007, the applicant submitted a brief, which provides that he has resided in the United States during the requisite period. The applicant asserts that he received inadequate assistance of counsel when he prepared his asylum application, application for cancellation of removal and his biographic information form. The applicant did not provide additional corroborating evidence with his response.

Any appeal or motion based upon a claim of ineffective assistance of counsel requires: (1) that the claim be supported by an affidavit of the allegedly aggrieved respondent setting forth in detail the agreement that was entered into with counsel with respect to the actions to be taken and what representations counsel did or did not make to the respondent in this regard, (2) that counsel whose integrity or competence is being impugned be informed of the allegations leveled against him and be given an opportunity to respond, and (3) that the appeal or motion reflect whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of counsel's ethical or legal responsibilities, and if not, why not. *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988). The applicant has failed to provide evidence that he has taken such action in regard to his assertion that he received ineffective assistance of counsel on his Form I-589, Application for Asylum, and his Form EOIR-42B, Application for Cancellation of Removal and Adjustment of Status.

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. 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 (BIA 1988). The applicant was notified in the AAO's intent to dismiss his appeal that he could not overcome the finding of misrepresentation by only offering a verbal explanation. The applicant failed to resolve the inconsistencies in his record though the submission of independent and objective evidence.

The absence of sufficiently detailed supporting documentation and the existence of derogatory information, which establishes the applicant made material misrepresentations, undermines the credibility of the applicant's claim of residence in this country for the requisite period. 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 by a preponderance of the evidence that he has resided in the United States since prior to January 1, 1982 through the date he attempted to file a Form I-687 application with the Service, as required under 8 C.F.R. § 245a.2(d)(5).

Given the applicant's contradictory statements on his applications and his reliance upon documents with minimal 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 the date he attempted to file a Form I-687 application pursuant to 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M--*, *supra*. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis.

Because the applicant has failed to provide independent and objective evidence to overcome, fully and persuasively, our finding that he engaged in the willful misrepresentation of a material fact, we affirm our finding of misrepresentation. The fact that the applicant made material misrepresentations in an attempt to establish his continuous residence within the United States for the requisite period renders him inadmissible pursuant to section 212(a)(6)(C) of the Act, 8 U.S.C. § 1182(a)(6)(C). This finding of misrepresentation shall be considered in the current proceeding as well as any future proceeding where admissibility is an issue. Since the applicant failed to establish that he is admissible to the United States as required by section 245A(a)(4) of the Act, 8 U.S.C. § 1255a(a)(4), he is ineligible to adjust to temporary resident status on this basis as well.

ORDER: The appeal is dismissed with a finding that the applicant willfully misrepresented of material fact. 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 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, 8 U.S.C. § 1182(a)(6)(C).

