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**U.S. Citizenship  
and Immigration  
Services**

L1

[REDACTED]

FILE: [REDACTED] MSC 05 188 10311

Office: Columbus

Date: OCT 09 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, Cleveland, Ohio, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed with a separate finding of fraud and inadmissibility.

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 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 indicates that he has tried to the best of his ability to obtain evidence to demonstrate that he resided in the United States since prior to January 1, 1982 but that such attempts have been unsuccessful. The applicant asserts that it is unfair that he be asked to provide such evidence in light of the significant passage of time that had passed since such events occurred more than twenty years ago. The applicant contends that the CIS officer who conducted his interview was predisposed to denying his Form I-687 application. The applicant requests that he be allowed to remain in this country to support and care for his family.

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. See section 245A(a)(2)(A) of the Immigration and Nationality Act (Act), 8 U.S.C. § 1255a(a)(2)(A), and 8 C.F.R. § 245a.2(b).

An alien 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. See section 245A(a)(3) of the Act and 8 C.F.R. § 245a.2(b)(1).

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. See Paragraph 11, page 6 of the CSS Settlement Agreement and paragraph 11, page 10 of the Newman Settlement Agreement.

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 including affidavits 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 applicant failed to submit any evidence to support his claim of residence in this country for the period in question.

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 April 6, 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 claimed that he resided at "[redacted] October 1981 through at least the date of the termination of the original legalization application period on May 4, 1988. However, the applicant failed to submit any evidence to corroborate his claim of 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.

A review of the record revealed that the applicant possessed a separate Administrative file or A-file, A76 094 171, which contained a Form I-589, Application for Asylum and Withholding of Removal, that the applicant submitted to the Service on October 28, 1998. The record reflects that the applicant's Form I-687 application and the Form I-687 supplement have been consolidated into this A-file. At part #27 of Form I-589 asylum application where applicants were asked to provide information relating to their education, the applicant indicated that he attended "Moscou University" in "Moscou" from September 1982 to June 1988. With this Form I-589 asylum application, the applicant included photocopies of two diplomas, one typed and written in Russian and the other typed and written in French. The applicant submitted a certified English translation of the French language diploma as required by 8 C.F.R. § 103.2(b)(3). The certified translation reflects that the diploma had been issued to the applicant by the Union of Soviet Socialist Republics on June 29, 1988 after he had successfully completed an academic program and earned a Master of Science in Engineering at Technical Institute of Vladimir. The diploma certifies that the applicant attended this academic institution from 1983 to 1988 with a specialty in Civil and Industrial Engineering to earn this degree.

The record shows that the Service denied the Form I-589 asylum application on September 15, 1999 and placed the applicant into removal proceedings. The applicant subsequently renewed his request for asylum before the Immigration Judge in removal proceedings and submitted a new Form I-589 asylum application dated December 29, 1999. At part #27 of the Form I-589 asylum application dated December 29, 1999 where applicants were asked to provide information relating to their education, the applicant indicated that he attended "Moscow University" in "Moscow, Russia" from September 1982 to June 1988. The record contains the transcript of the applicant's removal proceedings before the Immigration Judge in Cincinnati, Ohio on January 10, 2002. At page 30 of this transcript, the applicant testified that his study took place in Moscow at Vladimir University for six years from 1982 to 1988 when asked by his attorney to describe his education. When the Immigration Judge asked the applicant to clarify his response, the applicant testified that the university he attended was in Vladimir, a city 200 kilometers outside of Moscow.

The two separate Form I-589 asylum applications, the Russian and French diplomas, the certified translation of the French language diploma, and the transcript of the applicant's testimony before the Immigration Judge in removal proceedings on January 10, 2002 demonstrate that the applicant was attending school and residing in what was then the Union of Soviet Socialist Republics and is now Russia from either September 1982 or an indeterminable date in 1983 until June 1988. The applicant's own testimony and the evidence contained in the record negated his claim that he resided in the United States from prior to January 1, 1982 through the date he purportedly 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.

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 record shows that the applicant subsequently appeared at the CIS office in Columbus, Ohio for an interview relating to his Form I-687 application on October 21, 2005. The notes of the interviewing officer reflect that the applicant failed to offer any response when he was asked if he was in Russia or the United States from 1982 to 1988. The fact that the applicant failed to respond to this inquiry only serves to reinforce the conclusion that he did not reside in this country for the requisite period.

On November 29, 2005, the district director issued a notice of intent to deny to the applicant informing him of CIS's intent to deny his application. Specifically, the district director noted that this was based upon the applicant's failure to submit any evidence of continuous unlawful residence in the United States from January 1, 1982 through May 4, 1988 and his testimony during his interview on October 21, 2005. The applicant was granted thirty days to respond to the notice. However, the applicant failed to submit a response to the notice.

The district director determined that the applicant failed to submit any evidence demonstrating his residence in the United States in an unlawful status from prior to January 1, 1982 and, therefore, denied the Form I-687 application on May 2, 2006.

On appeal, the applicant indicates that he has tried to the best of his ability to obtain evidence to demonstrate that he resided in the United States since prior to January 1, 1982 but that such attempts have been unsuccessful. The applicant asserts that it is unfair that he be asked to provide such evidence in light of the significant passage of time that had passed since such events occurred more than twenty years ago. However, evidence contained in the record and the applicant's own testimony directly contradict his claim of residence in the United States from prior to January 1, 1982 through the date he purportedly 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, and instead establish that he was attending university while residing in Russia as early as September of 1982 until June 1988. While it is acknowledged that it may be difficult to obtain supporting documentation relating to a period that occurred some twenty or more years ago, the mere passage of time is insufficient to explain the contradictory nature of the evidence contained in the record and the applicant's own testimony.

The applicant contends that the CIS officer who conducted his interview was predisposed to denying his Form I-687 application. However, as noted above, the interviewing officer offered the applicant the opportunity to explain the discrepancies between his claim of residence in this country for the period in question and his prior testimony and evidence submitted in support of

his request for political asylum by asking the applicant directly whether he was in Russia or the United States from 1982 to 1988. The record shows that the applicant failed to avail himself of this opportunity to explain such discrepancies when he offered no response to the interviewing officer's inquiry. Therefore, the applicant's contention that the CIS officer who conducted his interview on October 21, 2005 was predisposed to deny his Form I-687 application cannot be considered as persuasive.

The absence of any supporting documentation that provides testimony to corroborate the applicant's claim of continuous residence for the requisite period seriously detracts from the credibility of this claim. Further, the fact that applicant had previously provided both direct testimony and evidence that negates his claim of residence in the United States from prior to January 1, 1982 through the date he purportedly 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. 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 any credible documentation to meet his burden of proof in establishing that he has resided in the United States since prior to January 1, 1982 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. at 77.

Given the applicant's failure to provide any independent evidence to corroborate his claim of residence value, the contradictory nature of the evidence contained in the record, and the applicant's conflicting testimony, 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 as required under section 245A(a)(2) of the Act. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis.

Beyond the district director's decision, another issue in this proceeding is whether the applicant has engaged in conduct that would render him inadmissible to the United States. 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 [or other office] does not identify all of the grounds for either the denial or termination 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).

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 claimed that he resided claimed that he resided at [REDACTED] [REDACTED] from October 1981 through at least the date of the termination of the original legalization application period on May 4, 1988 at part #30 of the Form I-687 application. The applicant signed the Form I-687 application, thereby certifying under penalty of perjury that the information provided on the Form I-687 application is true and correct. However, the applicant's claim of residence for the period in question is directly contradicted by his prior testimony in two separate Form I-589 asylum applications, the transcript of the applicant's testimony before the Immigration Judge in removal proceedings on January 10, 2002, and information contained in evidence submitted by him in support of the Form I-589 asylum applications. By [REDACTED] claiming on the Form I-687 application that he continuously resided in the United States from October 1981 through at least the date of the termination of the original legalization application period on May 4, 1988, the applicant has sought to procure an immigration benefit provided under the Act through the use of fraud and willful misrepresentation of a material fact. The record shows that the applicant has failed to offer any explanation for the discrepancies between his claim of residence in this country for the period in question and his prior testimony and evidence submitted in support of his request for political asylum despite being given several opportunities to do so. Additionally, because the applicant the applicant has failed to provide independent and objective evidence to overcome this derogatory information, we make a finding of fraud.

The applicant's failure to submit independent and objective evidence to overcome the preceding derogatory information seriously compromises the credibility of the applicant and his claim of continuous unlawful residence in this country since prior to January 1, 1982. 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.

An applicant for temporary resident status pursuant to Section 245A of the Act must establish that he or she is admissible as an immigrant. 8 C.F.R. § 245a.2(d)(5). Because of his attempt to procure an immigration benefit under the Act through fraud or the willful misrepresentation of a material fact, we find that the applicant 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 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)(i) of the Act.