



U.S. Citizenship  
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FILE: [REDACTED]  
MSC 05 215 10191

Office: NEW YORK

Date: SEP 19 2007

IN RE: Applicant: [REDACTED]

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, 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 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 asserts that the district director failed to give due weight to the affidavits he submitted to corroborate his claim of continuous residence in the United States during the requisite period. The applicant states that he cannot be expected to prove his dates of initial entry, departure, and return to the United States during the requisite period since he entered the United States without inspection.

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. *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 regulation at 8 C.F.R. § 245a.2(d)(3)(v) states that attestations by churches, unions, or other organizations to the applicant's residence by letter must: identify applicant by name; be signed by an official (whose title is shown); show inclusive dates of membership; state the address where applicant resided during membership period; include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; establish how the author knows the applicant; and, establish the origin of the information being attested to.

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 application and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on May 3, 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 indicated that he resided at "[redacted], Brooklyn, New York" from October 1981 to June 1986 and at "[redacted] Ozone Park, New York" from July 1986 to September 1994. At part #32, where applicants are instructed to list all absences outside the United States since initial entry, the applicant that he was in Canada visiting friends from June 1987 to July 1987.

During his legalization interview on February 27, 2006, the applicant stated that he first entered the United States with his parents on October 17, 1981. He explained that he and his parents first traveled to Canada and then entered the United States from Canada. When asked about his absences outside the

United States during the requisite period, the applicant stated that he went to Canada in June 1987 and to Bangladesh in 1993. He claimed that he never attended school in this country and that he started working at the age of 15 or 16 years old selling religious books on the street. In response to the question "Have you ever been deported or been under any removal proceedings?" the applicant replied that he had never seen an immigration judge.

The applicant's statement during his legalization interview that he had never "seen a judge" in removal proceedings is not true. The record reveals that the applicant arrived in the United States at John F. Kennedy International Airport, Jamaica, New York, on April 14, 1994, via Bangladesh Airlines Flight [REDACTED] from Dhaka, Bangladesh. He presented himself for immigration inspection with a Bangladeshi passport in the name of [REDACTED]. The date of birth of [REDACTED] on the biographic page of the Bangladeshi passport is listed as "June 16, 1965." The applicant's photo on the biographic page of the Bangladeshi passport appears to have been substituted for the original photo.

The passport bears a United States nonimmigrant visa number [REDACTED] purportedly issued in Tokyo, Japan, on April 14, 1993, that was valid for multiple entries into the United States until April 14, 1994. This visa appears to be fraudulent. The lettering in the words "Tokyo" and "Bearer(s)" and the dates "14 April 1993" and "14 April 1994" appear to be hand-drawn. Furthermore, the visa does not contain a nonimmigrant visa classification. Nonimmigrant visas issued by United States embassies and consulates abroad normally contain a nonimmigrant visa classification. It is noted that the applicant's Bangladesh Airlines flight coupon reflects a Dhaka/New York/Dhaka itinerary, not a New York/Bangladesh/New York itinerary.

In a sworn statement before immigration officers at John F. Kennedy International Airport the applicant stated that his true and complete name was [REDACTED] and that he was born in Bangladesh on October 13, 1970, not on June 16, 1965, as indicated on the Bangladeshi passport he presented for immigration inspection. In response to the question, "In what country do you live?" the applicant responded, "I live in Bangladesh." In response to the question "What type of passport did you use to board the flight?" he stated, "I used a Bangladesh passport." In response to the question "What name was on the passport you used?" the applicant responded, "I used the name [REDACTED]." In response to the question "Did you have a U.S. visa in the passport?" he responded, "I've never applied for a U.S. visa to visit the U.S." When asked, "Where did you obtain your passport (and visa)?" the applicant responded, "I obtained my passport and tickets from my political party." In response to the question "Where have you lived during the past 5 years?" he responded, "I lived in Bangladesh." When asked, "When you last leave your home country?" the applicant responded, "I left my country on February 4, 1994."

The applicant requested political asylum and a hearing before an Immigration Judge. On the Form I-589, Request for Asylum in the United States, he listed his date of birth as "January 19, 1975." He indicated on the I-589 asylum application that he became involved in the [REDACTED] party led by [REDACTED] in Bangladesh in 1989 while he was a student attending New Model Degree College. The applicant claimed that he was arrested after participating in and leading political demonstrations on March 25, 1993 and September 18, 1993. He stated, "I was an active member of Jatio party

since 1989 and work hard for releasing our leader [REDACTED]. I continued working for the party until my departure from Bangladesh on February 1994.”

In support of his asylum application the applicant submitted a Form G-325A, Biographic Information, dated May 20, 1994, in which he indicated that he resided at [REDACTED] until February 1994 and had resided at [REDACTED] Bronx, New York” since February 1994.

On March 2, 1995, an Immigration Judge in New York, New York, found that the applicant failed to establish a well-founded fear of persecution, denied his request for asylum and for withholding of removal, and ordered him removed from the United States. On January 17, 2001, the Board of Immigration Appeals dismissed the applicant’s appeal from the removal order of the Immigration Judge.

The applicant has previously presented himself for immigration inspection with a Bangladeshi passport that appears to have been photo-substituted and a nonimmigrant United States visa that appears to be fraudulent. He stated during his sworn statement at John F. Kennedy International Airport on February 5, 1994, that he had never applied for a United States visa and that he had lived in Bangladesh for the past five years. This statement contradicts his current claim that he has lived in the United States since October 1981.

The applicant’s statement on the asylum application that he worked for the Jatiya Party and General [REDACTED] in Bangladesh until his departure for the United States on February 5, 1994 contradicts his current claim that he has lived in the United States since October 1981.

The applicant’s statement on the Form G-325A that he lived in [REDACTED] until February 1994 and that he had lived in the United States since 1994 is contradicted by his current claim on the Form I-687 that he has lived in the United States since October 1981.

The applicant attempted to gain admission to the United States by presenting himself for immigration inspection with what appear to be a photo-substituted Bangladeshi passport and a fraudulent United States nonimmigrant visa. He has made numerous contradictory claims regarding his dates of entry and residence in the United States and in Bangladesh during his sworn statement at John F. Kennedy International Airport, during his removal proceeding, and on the Form I-687. His asylum claim was found to be not credible by both the Immigration Judge and the Board of Immigration Appeals. These facts raise serious questions regarding the credibility of the applicant’s claim of continuous residence in the United States during the requisite period.

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).

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982 the applicant submitted an affidavit dated October 29, 2004, from [REDACTED] [REDACTED] stated that he and the applicant had been close friends since he first met the applicant in Brooklyn, New York, in 1981. Although [REDACTED] attested to the applicant's residence in this country since 1981, he failed to provide any relevant and verifiable testimony, such as how he met the applicant or the applicant's address(es) of residence in this country, to corroborate the applicant's claim of residence in the United States for the requisite period.

The applicant also submitted an affidavit dated October 30, 2004, from [REDACTED] [REDACTED] stated that the "above named individual is well known to me since 1981 who used to visit me now and then and also sometimes he worked for me during 1984 through 1988." However, [REDACTED] failed to provide any relevant and verifiable testimony, such as how he met the applicant, the applicant's addresses in the United States during the period, the nature of his business, or what type of work the applicant performed for him during the period from 1984 to 1988.

The applicant included an affidavit dated March 5, 2005, from [REDACTED] stated that the applicant "is personally known to me since November 1981," when he met the applicant at a community function in Brooklyn, New York.

In the notice of intent to deny issued on March 6, 2005, the district director questioned the veracity of the applicant's claimed residence in the United States since prior to January 1, 1982 by noting the deficiencies, conflicts, and contradictions cited above. The applicant was granted thirty days to respond to the notice and submit additional evidence in support of his claim of residence in this country since prior to January 1, 1982.

The applicant, in response, submitted an affidavit dated March 19, 2005, from [REDACTED] [REDACTED] stated that the "above named individual is well known to me since 1981." However, [REDACTED] failed to provide any relevant, detailed, and verifiable testimony such as how he met the applicant, the frequency of his contact with the applicant during the requisite period, or the applicant's addresses in the United States during the requisite period to corroborate the applicant's claim.

It is noted that the affidavits from [REDACTED] [REDACTED] are all in the same format. The affiant's name and address are centered at the top of the page. The legend "[REDACTED] Bronx, New York" is written at the upper left hand margin. In the affidavits from [REDACTED] and [REDACTED] [REDACTED] this portion of the letter is obviously typed in a different font from the text of the affidavit.

Each affidavit is addressed to "To Whom It May Concern" and this salutation is underlined and centered in each of these affidavits. Furthermore, each of the affiants states that "the above named" or "the above referenced" individual was known to him since 1981. These striking similarities raise questions regarding the credibility of these affidavits.

The district director determined that the applicant had failed to submit sufficient credible evidence establishing his continuous residence in this country since prior to January 1, 1982, and, therefore,

denied the application on April 5, 2006. The district director specifically noted in the denial decision that the applicant's affidavits bear a striking resemblance to numerous other affidavits from the same affiants presented by other applicants, suggesting that the affidavits are altered, misused, forged, and very likely fraudulent.

On appeal, the applicant asserted that the district director failed to give due weight to the affidavits he submitted to corroborate his claim of continuous residence in the United States during the requisite period. He further asserted that the affidavits he submitted in support of his claim are from persons "who know me intimately." The applicant stated:

The affidavits submitted by the Respondent have been trivialized by arraying a host of alleged shortcomings in it. But the truth is that in the absence of any sample of the language of a credible/standard type of affidavit, the applicants like us borrowed the language from others as to how to execute the affidavits in connection with the I-87 and hence it is quite possible that the affidavits might bear "striking resemblance to numerous other affidavits.

The applicant's assertions on appeal are not persuasive. The fact that the applicant's name and address on two of his four affidavits have obviously been typed in a different font from the text of the rest of the affidavit and the text of the affidavits merely make reference to "the above named individual" or "the above referenced individual" suggests that the applicant's name and address have been added to the affidavits after they were signed by the affiants and may have originally referred to a completely different individual.

Even if the question of the striking resemblance in the format of the applicant's affidavits is not taken into consideration in this proceeding, the fact remains that the applicant's affidavits lack sufficient relevant, detailed, and verifiable information to corroborate the applicant's claim of continuous residence in the United States during the requisite period. Furthermore, as previously stated, the applicant has previously attempted to gain admission to the United States, and then political asylum in the United States, through the use of fraud and willful misrepresentation of material facts. He has made numerous contradictory claims regarding his dates of entry and residence in the United States and in Bangladesh during his sworn statement at John F. Kennedy International Airport, during his removal proceeding, and on the Form I-687. His asylum claim was found to be not credible by both the Immigration Judge and the Board of Immigration Appeals.

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.

By engaging in these actions, the applicant has negated his own credibility as well as the credibility of his claim of continuous residence in this country for the period from prior to January 1, 1982 to May 4, 1988. In addition, the applicant rendered himself inadmissible to the United States pursuant

to section 212(a)(6)(C) of the Act by attempting to obtain an immigration benefit through the use of fraud and willful misrepresentation of a material fact.

The AAO issued a notice to the applicant on July 25, 2007, informing him that it was the AAO's intent to dismiss his appeal based upon the fact that he has used fraud and willful misrepresentation of material facts in order to obtain an immigration benefit. 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 the applicant's claim of residence in the United States 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.

The absence of sufficiently detailed supporting documentation and the existence of derogatory information that establishes the applicant used fraud and willful misrepresentation of material facts in order to obtain an immigration benefit all seriously undermine the credibility of the applicant's claim of continuous residence in this country for 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 has resided in the United States since prior to January 1, 1982 to 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(a)(2) of the Act. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis.

In addition, the fact that the applicant used fraudulent documents and made material misrepresentations in an attempt to obtain an immigration benefit rendered him inadmissible to this country pursuant to section 212(a)(6)(C) of the Act. Because the applicant has failed to provide independent and objective evidence to overcome, fully and persuasively, our finding, we affirm our finding of fraud. The applicant failed to establish that he is admissible to the United States as required by 8 C.F.R. § 245a.2(d)(5). 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.