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U.S. Citizenship
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[REDACTED]

FILE:

[REDACTED]

MSC 05 223 10974

Office: LOS ANGELES

Date:

SEP 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:

SELF-REPRESENTED

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, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district 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 district 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, the applicant asserts that he was “not given a fair chance” during his legalization interview because the CIS officer who conducted the interview was “unfair in her judgment.”

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 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 11, 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] Santa Ana, California” from October 1981 to July 1988.

At his interview with a CIS officer on March 3, 2006, the applicant stated that he first entered the United States without inspection near Tijuana, Mexico, in October 1981.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant submitted an affidavit dated May 4, 2005, from [REDACTED] a resident of Orange, California. [REDACTED] stated that she had personal knowledge that the applicant resided at [REDACTED], Santa Ana, California,” from October 1981 to July 1988. [REDACTED] indicated that she could attest to this information because the applicant was a close family friend. However, [REDACTED] provided no information as to the frequency of her contact with the applicant during the requisite period.

The applicant also submitted a fill-in-the-blank affidavit dated March 2, 2006, from [REDACTED], a resident of [REDACTED], stated that he had personal knowledge that the applicant resided at [REDACTED], Santa Ana, California" from October 1981 to July 1988. He stated that his relationship to the applicant was "third degree cousin." However, [REDACTED] provided no information as to the frequency of his contact with the applicant during the requisite period.

The applicant included a fill-in-the-blank affidavit dated March 2, 2006, from [REDACTED] a resident of [REDACTED] stated that he had personal knowledge that the applicant resided at [REDACTED], Santa Ana, California" from October 1981 to July 1988. [REDACTED] explained that he is the applicant's wife's cousin. However, [REDACTED] provided no information as to the frequency of his contact with the applicant during the requisite period.

The applicant provided a photocopy of a Form I-687 that he claimed he attempted to file with the Service in 1988.

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 July 6, 2006.

On appeal, the applicant asserts that the CIS officer who conducted his legalization interview did not give him a "fair chance to speak and explain my side" because the interviewer was "unfair in her judgment."

In the absence of a transcript of the applicant's legalization interview, it is not possible to confirm or rebut his assertions on appeal. Nevertheless, the fact remains that the applicant has not provided any contemporaneous evidence of residence in the United States relating to the 1981-88 period, and has submitted attestations from only three people concerning that period, all of which lack sufficient relevant and specific information to corroborate the applicant's claim.

Furthermore, as previously stated, the applicant provided a photocopy of a Form I-687 signed by the applicant on August 28, 1988. This document appears to have been extensively altered. The original applicant information on parts #1 through 21, 35, 36, and 44 through 50 appear to have been eradicated and the applicant's personal information substituted. Page 2 of the application is missing.

Furthermore, there are contradictions between the applicant's statements during the legalization interview and the information contained on the photocopied Form I-687. The applicant stated under oath during his legalization interview on March 3, 2006, that he entered the United States without inspection near Tijuana, Mexico in October 1981. However, he indicated on the photocopied 1988 Form I-687 that he entered the United States without inspection on October 15, 1981, from Vancouver, Canada.

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.

The applicant has provided an altered document in an attempt to establish his eligibility for temporary resident status. He has also made contradicting statements regarding his manner of entry into the United States in October 1981. By engaging in such action, 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 as an alien who attempted to obtain an immigration benefit through the use of fraud and willful misrepresentation of material facts.

The AAO issued a notice to the applicant on July 19, 2007, informing him that it was the AAO's intent to dismiss his appeal based on the fact that he submitted an altered document and made material misrepresentations 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.

The applicant, in response, submits a personal statement dated August 14, 2007, in which he claims that he first entered the United States without inspection near El Paso, Texas. He states:

I never submitted a photocopy of Form I-687 that I entered the United States without inspection on October 15, 1981 from Vancouver, Canada. I am very sure that I stated that I entered into US through EL PASO, TX because when I arrived in Mexico City we traveled for 2 days to reach CIUDAD JUAREZ. In order to prove my claim that I traveled to Mexico, my sister is trying to get a certification from Embassy of Mexico in the Philippines that I traveled to Mexico with a visitors visa but as of now we have not heard any answer from the embassy and I even e-mailed them and still haven't received any reply.

The applicant's statement that he indicated on the photocopied 1990 Form I-687 that he entered the United States "through EL PASO, TX" is incorrect. The applicant indicated on the

photocopied 1990 Form I-687 that he first entered the United States on October 1981, from Vancouver Canada.

The applicant, in response to the AAO notice, submits photocopies of documents dated after the requisite period, but he has not provided any independent and objective evidence from credible sources addressing, explaining, and rebutting the discrepancies noted 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 absence of sufficiently detailed supporting documentation and the existence of derogatory information that establishes the applicant submitted an altered document and made material misrepresentations all seriously undermine the credibility of the applicant's claim of residence in this country 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 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 utilized a document in a fraudulent manner and made material misrepresentations in an attempt to establish his residence within the United States throughout the requisite period rendered him inadmissible to this country pursuant to section 212(a)(6)(C) of the Act. By filing the Form I-687 application and submitting a falsified document, the applicant has sought to procure a benefit provided under the Act through fraud and willful misrepresentation of a material fact. Because the applicant has failed to provide independent and objective evidence to overcome, fully and persuasively, our finding that he submitted a falsified document, 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.