

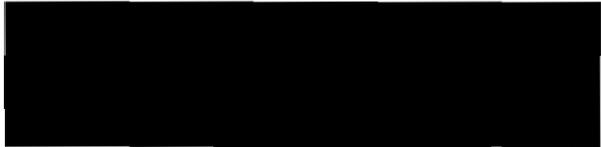


U.S. Citizenship
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FILE: [REDACTED]
MSC-06-080-10601

Office: NEW YORK

Date: **MAY 20 2008**

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. If your appeal was dismissed or rejected, all documents have been returned to the National Records Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

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. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant submitted a Form I-687, Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (Act), and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet. The director determined that the applicant had not established by a preponderance of the evidence that he entered the United States through Canada with a broker on October 1981, nor had he established by a preponderance of the evidence that he had continuously resided in the United States in an unlawful status for the duration of the requisite period. The director denied the application, finding that the applicant had not met his burden of proof and was, therefore, not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, the applicant asserts that the director did not make a “justifiable decision” and “entered an erroneous capricious decision” as he had submitted corroborative affidavits to the facts and circumstances.

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 Act, 8 U.S.C. § 1255a(a)(2). The applicant must also establish that he 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). The regulations clarify that the applicant must have been physically present in the United States from November 6, 1986 until the date of filing the application. 8 C.F.R. § 245a.2(b)(1).

For purposes of establishing residence and physical presence under the CSS/Newman Settlement Agreements, the term “until the date of filing” in 8 C.F.R. § 245a.2(b)(1) means until the date the applicant attempted to file a completed Form I-687 application and fee or was caused not to timely file during the original legalization application period of May 5, 1987 to May 4, 1988. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

The applicant has the burden of proving by a preponderance of the evidence that he has resided in the United States for the requisite period, 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.* at 80. 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, 431 (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 director denied the application for temporary residence on July 21, 2006. In denying the application, the director found that the applicant's testimony and evidence, principally submitted through declarant's statements that he entered the United States in 1981, and continually resided in the United States during the requisite period in an unlawful status, were not credible. The director determined that the applicant had failed to meet his burden of proof by a preponderance of the evidence.

At issue in this proceeding is whether the applicant entered the United States in 1981, and continually resided in the United States during the requisite period in an unlawful status. Here, the applicant has failed to meet this burden.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on December 19, 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 showed his first address in the United States to be at [REDACTED], New York, New York, from November 1981 to August 1982, and his second address in the United States to be at 568 [REDACTED], Brooklyn, New York, from September 1982 to October 1987. Similarly, at part #33, he showed his first employment in the United States to be in self-employment in the City of New York, New York, from November 1981 to September 1987.

The applicant prepared and submitted a Form G-325A dated October 28, 2002. On that Form he provided information of his employment in the last five years (from the time of preparation of that

Form). The applicant stated that from March 1997 to April 2000 he was employed as a sales assistant at the [REDACTED] Broadway, Bronx, New York, and a sales assistant by [REDACTED] Bronx, New York, from June 2000 to present time (i.e. October 28, 2002).

According to a statement made in 1991 found in the record of proceeding, the applicant stated that he first entered the United States on October 12, 1981.

The applicant submitted copies of his passport issued October 7, 2002, with a birth certificate and the following relevant documentation in this matter:

- An affidavit made April 22, 2005, from [REDACTED] of the Bronx, New York, that stated he personally knows the applicant and lists eight street addresses with 16 separate month and year commencement and end dates for each of the applicant's residences in New York and Florida from November 1981 to present (i.e. April 22, 2005). The affiant stated that the longest period that he had not seen the applicant was June-July 1987. The affidavit was notarized by [REDACTED], a notary public qualified in Westchester County, New York.
- A second affidavit made April 22, 2005, from [REDACTED] of the Bronx, New York, that stated he personally has known the applicant since 1981 as a family friend and that he accompanied the applicant when he submitted his legalization documents in 1988 and in 1992. The affidavit was notarized by [REDACTED], a notary public qualified in Westchester County, New York.

No information was provided how [REDACTED] could recall exactly the detailed information of each of the applicant's eight residences over a 24 year period. It is impossible to verify from the information provide in each affidavit that the affiant had personal knowledge of the applicant's residences since 1981 including the applicant's residence in Florida. [REDACTED] fails to say how he knows or was aware that the applicant traveled outside the United States without advance parole and returned and reentered without any legal papers. Reasonably it would not have been in the applicant's interest to make his unlawful travel visit known. Since the applicant spent approximately four years in Florida (between October 1987 to July 1991) and as far as [REDACTED] has divulged he is a resident of New York, it was not explained how he knew to his personal knowledge what the applicant was doing out of the State of New York or whether the applicant was continuously physically present in the United States.

- An affidavit made April 25, 2005, from [REDACTED] of Elmsford, New York, that stated he knows the applicant from 1987 as a friend. The affidavit was notarized by [REDACTED] a notary public qualified in Bronx County, New York.

[REDACTED] offers no indication that he has direct, personal knowledge of the applicant's continuous residence in the United States. He does not indicate where or under what circumstances he met the applicant, the addresses at which the applicant lived during the requisite period, his frequency of contact with him during this period, or any other details of the events and

circumstances of the applicant's residence. The lack of detail is significant, considering Mr. [REDACTED]'s claim that he has been a good friend to the applicant for 18 years. The affidavit provides no information concerning the applicant's claim that he entered the United States in 1981, and continually resided in the United States during the requisite period in an unlawful status. Therefore this affidavit has slight probative value in this matter.

- An affidavit made April 22, (the year is obscured) from [REDACTED] of the Bronx, New York, that stated he has known the applicant since 1982 as the applicant is his intimate friend and roommate for 11 years (i.e. 1993). The affidavit was notarized by Lucile Coleman, a notary public qualified in New York County, New York.

No evidence was submitted such as rent receipts or a lease of the applicant's reputed residences at [REDACTED], New York from November 1981 to August 1982, and his second address in the United States to be at [REDACTED], Brooklyn New York from September 1982 to October 1987 in this affidavit. No utility bills, tax receipts, pay statements, or tax records, were introduced by the affiant to substantiate these residences. The affiant's lack of detail regarding the events and circumstances of the applicant's residence is significant given his claim to have a close friendship with the applicant spanning 11 years. This affidavit has very limited probative value as evidence of the applicant's continuous residence in the United States since a date prior to January 1, 1982.

- An affidavit made April 25, 2005, from [REDACTED] of Old Westbury, New York, that stated he has known the applicant since 1981 and that the applicant "has been continuously resident of the United States of America since that time." The affidavit was notarized by [REDACTED] a notary public qualified in Bronx County, New York.

It is noted that [REDACTED] did not state with any specificity where he first met the applicant, how he dates his acquaintance with him, or the frequency of their contact. The declarant's the lack of detail regarding the events and circumstances of the applicant's residence is significant given his claim to have a friendship with the applicant spanning 24 years. There is no detail given that would be verifiable. For these reasons, this affidavit have very limited probative value as evidence of his continuous residence in the United States since a date prior to January 1, 1982.

The director issued a Notice of Intent to deny (NOID) dated May 1, 2006, requesting additional evidence from the applicant. The applicant was afforded thirty (30) days to provide additional evidence in response to the NOID. The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of documentation that may be provided to establish proof of continuous residence in the United States during the requisite period. This list includes: past employment records; utility bills; school records; hospital or medical records; attestations by churches, unions or other organizations; money order receipts; passport entries; birth certificates of children; bank books; letters or correspondence involving the applicant; social security card; selective service card; automobile receipts and registration; deeds, mortgages or contracts; tax receipts; and insurance policies, receipts, or letters.

According to the director, CIS immigration officers interviewed the applicant on March 8, 2006. The director found that the applicant claimed to have entered the United States from Canada in

October of 1981 but had provided no corroborative evidence that he entered or entered Canada. The director found that the affidavits submitted by the applicant followed forms started by [REDACTED] who was indicted in Savannah, Georgia for preparing and filing multiple I-687 applications for financial gains from aliens.

In response to the NOID, counsel re-submitted the affidavits above noted from [REDACTED] and [REDACTED], submitted the applicant's social security card and also the following:

- An "Air Mail Par Avion" envelope sent by [REDACTED] Tezzoan, Dhaka, The People's Republic of Bangladesh addressed to the applicant at [REDACTED] New York with the postage stamps of Bangladesh.
- A second "Air Mail Par Avion" envelope sent by [REDACTED], Dhaka, Bangladesh, addressed to the applicant at 568 Vanderbilt Brooklyn New York with postage stamps of Bangladesh on the envelope as cancelled on November 21, 1984.

The director denied the application for temporary residence on July 21, 2006. In denying the application, the director found that the envelopes submitted appeared to be altered and that the affidavits submitted were insufficient and not amendable for verification.

Examining the postage stamps found on both envelopes, a stamp common to each was issued by the Bangladesh postal service on March 31, 1989. The pictorial theme on that stamp is an elevation view of Curzon Hall, Dhaka University, Bangladesh. The designation "Curzon Hall" is visible as printed on the stamp, which is on the envelopes. The denomination noted on the Curzon Hall stamp is 5.00.²

It is apparent that the Air Mail Par Avion envelope sent by [REDACTED], marked cancelled on November 21, 1984, is fraudulent, since the stamp on that envelope was not issued until 1989, approximately five years later. It is apparent that the applicant has contrived to submit the envelope into the record for purposes of establishing his residence and physical presence in the United States.

Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

As already stated, the applicant upon appeal asserted that the director did not make a "justifiable decision" and "entered an erroneous capricious decision" as he had submitted corroborative affidavits to the facts and circumstances.

¹ The applicant's father.

² See <http://www.trulybangladesh.com/stamps/bangladesh-postage-stamp-details.php?/recordID=304> accessed February 26, 2008.

Further, the applicant submitted the following documents:

Several copies of the applicant's passport pages.

An affidavit from [REDACTED], a resident of the Bronx, New York, made August 14, 2006, who stated that the applicant has been known to [REDACTED] since 1981. According to Mr. [REDACTED] the applicant is a clerk at a newsstand at [REDACTED], Bronx, New York. [REDACTED] stated that he first met the applicant at that newsstand in 1981.

- An affidavit from [REDACTED] a resident of the Bronx, New York, made August 14, 2006, which stated that the applicant has been known to [REDACTED] since 1981. According to Mr. [REDACTED] the applicant is a clerk at a newsstand at [REDACTED], Bronx, New York. Mr. [REDACTED] stated that he first met the applicant at that newsstand in 1981.
- A CIS Form G-235 prepared and signed by the applicant under penalty of perjury on October 28, 2002.

On that Form G-235 the applicant provided information of his last employment in the last five years (from the time of preparation of that Form). The applicant stated that from March 1997 to April 2000 he was employed as a sales assistant at the [REDACTED], Bronx, New York, and a sales assistant at [REDACTED] Bronx, New York, from June 2000 to present time (i.e. October 28, 2002).

Therefore, [REDACTED]'s and [REDACTED]'s statements are contradicted by the applicant's statement of his employment in the Form G-325. If both men first met the applicant at the newsstand, it would have been after April 2000 at the PATGO Stationery newsstand at the corner of [REDACTED] and [REDACTED] Broadway, Bronx, New York. Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

There is no specificity or detail submitted in the record amenable to verification to confirm that the applicant applied for temporary residency under the CSS/Newman Settlement Agreements or resided in the United States during the requisite period. The applicant has provided insufficient evidence of residence in the United States relating to entry to the United States before January 1, 1982. Although the applicant has provided proof of residence in the United States after the requisite period, commencing in 2000, such proof does not cover the entire requisite period.

The AAO issued a notice to both the applicant and counsel on March 24, 2008, informing them that it was the AAO's intent to dismiss the applicant's appeal based upon the fact that he had submitted fraudulent evidence and made material misrepresentations in an attempt to establish his residence within the United States for the requisite period and thus gain a benefit under the Act. The AAO further informed the applicant of the relevant ground of inadmissibility under section 212(a)(6)(C) and that, as a result of his actions, his appeal would be dismissed, a finding

of fraud would be entered into the record, and the matter would be referred to the U.S. Attorney for possible prosecution. *See* 8 C.F.R. § 245a.2(t)(4).

The applicant was granted fifteen days to provide substantial evidence to overcome, fully and persuasively, these findings. A response was received from the applicant dated April 2, 2008, concerning the falsification above noted. In response to the notice of derogatory information, the applicant re-submitted affidavits from [REDACTED] made August 14, 2006 and [REDACTED] made August 14, 2006. The applicant failed to submit any evidence addressing the discrepancies and contradictions that were found to undermine the basis of his claim of residence in the United States for the requisite period. As noted above, it is incumbent on the applicant to resolve inconsistencies by independent objective evidence. *Matter of Ho, supra*. The applicant has failed to provide evidence to overcome the basis for a finding of fraud.

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.

In this case, the absence of credible and probative evidence to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of his 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 by a preponderance of the evidence that he has resided in the United States for the requisite period, as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M-*, 20 I&N Dec. 77 (Comm. 1989). The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis.

The AAO finds that the applicant has sought to procure a benefit provided under the Act through fraud and willful misrepresentation of a material fact., a ground of inadmissibility under section 212(a)(6)(C) of the Act. Because the applicant has failed to provide independent and objective evidence to overcome this finding, fully and persuasively, the AAO affirms its finding of fraud. A finding of fraud is entered into the record, and the matter will be referred to the U.S. Attorney for possible prosecution, as provided in 8 C.F.R. § 245a.2(t)(4).

ORDER: The appeal is dismissed with a finding of fraud. This decision constitutes a final notice of ineligibility.