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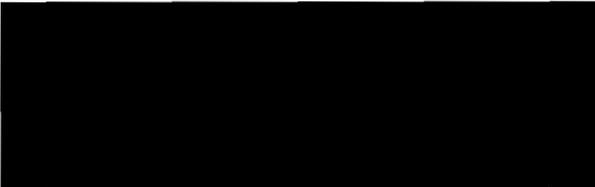
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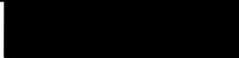
U.S. Citizenship
and Immigration
Services

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FILE:



Office: LOS ANGELES

Date: OCT 01 2008

MSC 05 193 30571

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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits 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.

for Michael T. Kelly
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. 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, together comprising the I-687 Application. The director determined that the applicant had not 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. Specifically, the director found that the applicant had not provided sufficient evidence, had provided contradictory testimony, and although notified of some of the contradictory information had failed to clarify or otherwise explain the contradictory information. 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 Citizenship and Immigration Services (CIS) officer did not follow guidelines and disregarded the court's order in the CSS/Newman Settlement Agreements. The applicant did not address the inconsistencies in his testimony and the contradictions pointed out by the director in the Notice of Intent to Deny (NOID) and that were incorporated into the director's October 26, 2006 denial decision. The applicant also submits an affidavit and other documentation. On July 23, 2008, the AAO issued a NOID detailing the discrepancies and contradictions in the record and requested that the applicant explain the discrepancies or to otherwise rebut the adverse information. In rebuttal, the applicant again asserts that CIS disregarded the federal court order and in particular did not use good faith and reasonable efforts to distribute the "Settlement Agreement." The applicant suggests that his Form I-589, Application for Asylum, looks questionable and contradictory as he had to "safeguard himself" and his "only purpose was to meet the requirement and to [be] allowed to honestly work for a living." The applicant submits an excerpt from Leviticus 19 verse 33 from an unidentified version of the Christian Bible; an excerpt from the Washington Post, dated March 11, 1999 with the title *Clinton: Support for Guatemala Was Wrong*; and Instructions for filing the I-765 noting the required fee of \$340.

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 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). 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 or she 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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.2(d)(6).

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 unlawful residence in the United States for the requisite period. Here, the submitted evidence is not relevant, probative, and credible.

The record shows that the applicant submitted his Form I-687 Application to CIS on April 11, 2005. The director determined that the applicant had failed to submit sufficient credible evidence to establish that he had continuously resided in the United States for the requisite period and, accordingly, denied the application on October 26, 2006.

Prior to issuing the denial decision, the director issued a NOID on December 29, 2005, highlighting some of the discrepancies between the statements made in the applicant's current legalization application and his prior asylum application. The director also noted that the applicant's claimed employers had not reported his earnings from 1983 to 1991 and that the applicant had not provided original IRS printouts to show that he had filed income tax reports in those years. The director further noted that the applicant stated under oath that he had not used other names but that CIS records showed that he had used another name (([REDACTED])) to gain immigration benefits, specifically a photo-subbed visa (([REDACTED])) to enter

the United States on July 7, 2001. In a January 20, 2006 response to the director's findings, the applicant emphasized that he was a member of the CSS/LULAC Class Action lawsuit and asserted that CIS did not understand the word "amnesty." The applicant also referenced previously submitted documents but did not address the discrepancies in the record that the director noted.

A review of the record in this matter reveals the following:

- On the application submitted April 11, 2005, the applicant indicated at part #16 of the Form I-687, where applicants are instructed to list their last entry into the United States, that he last entered the United States on July 13, 2001 at the border without a visa. At part #30 of the same Form I-687 application, where applicants were asked to list all residences in the United States since first entry, the applicant listed his address during the pertinent time period as [REDACTED], Los Angeles, California from February 1981 to February 1989. At part #32 of the same application, where applicants are asked to list all their absences from the United States since entry, the applicant listed absences in February to March 1988; in April to May 1998; and in June to July 2001. At part #33 of the same application, where applicants are asked to list all employment in the United States, the applicant stated that he was employed by [REDACTED] in Los Angeles from June 1983 to December 1988. At part #3 of the same application, where applicants are instructed to give their date of birth, the applicant states that he was born on September 20, 1967; thus, the applicant was 13 years old when he claims to have entered the United States in February 1981.
- A Form I-687 signed and certified by the applicant on March 25, 1988, where at part #36, the applicant indicates he was employed by "General Lab." in Los Angeles from June 1983 to present.
- A Form I-589, Request for Asylum in the United States signed under penalty of perjury on May 21, 1991, wherein the applicant states that he last entered the United States on February 10, 1990 without a visa; that he had fled Guatemala because he feared the guerillas in Guatemala.
- A Form G-325A, Biographic Information, signed by the applicant on May 21, 1991, wherein the applicant states that he resided in Los Amates Mariscos, Izabal, Guatemala from November 1967 to February 1990.
- The applicant's sworn statement dated July 13, 2001, wherein the applicant admits paying \$900 for a fraudulent passport and visa that he had presented to an immigration officer when attempting to enter the United States at the Houston, Texas Airport. In the same sworn statement, the applicant declares that he had been living in the United States for 13 or 14 years and that he feared returning to Guatemala.
- A record of a credible fear interview conducted by a CIS asylum officer on July 13, 2001 (with the asylum officer's decision dated July 18, 2001) wherein the applicant told the asylum officer that he had escaped Guatemala in 1988 because he feared the government and guerillas because of the war and feared crime and gangs that were connected to the police.

- A photocopy of a document titled "Notice of Change of Terms in Tenancy" issued to [REDACTED] (child) [REDACTED] dated October 1, 1981.
- A photocopy of a receipt issued to the applicant dated February 10, 1982 by the La Brea Family Dental Practice.
- A photocopy of a receipt from the Southern California College of Optometry issued to the applicant for an examination dated August 16, 1981.
- A photocopy of a letter on the letterhead of [REDACTED] dated April 26, 1985 issued to the applicant informing the applicant that he would not be hired at that time.
- A photocopy of a letter dated October 24, 1984 from the new accounts department of BW&A rejecting the applicant's application for credit due to a discrepancy in the applicant's credit information.
- A letter dated January 18, 1988 from a financial services representative at the Bank of America indicating that the applicant maintained a savings account with the bank and that the account had been opened since September 1982.
- Photocopies of the first page of [REDACTED] (the applicant's mother) Internal Revenue Service (IRS) Forms 1040, Individual Tax Return with an IRS Form W-2, Wage and Tax Statement superimposed on the page, for the years 1981, 1982, and 1983, listing the applicant as a dependent.
- A letter dated November 9, 2005, from the Social Security Administration (SSA) listing the applicant's social security earnings in the years 1983 to 1988 from [REDACTED] Wholesale, in the years 1990 and 1991 from JBA Inc., and in 1991 from R3 Realty Corp.
- An email response from a SSA employee to a CIS interviewing officer's request for verification of the information in the November 9, 2005 letter, wherein the SSA employee indicated that the wages from 1983 to 1991 were added to the applicant's social security record at his request, based on IRS W-2 Forms that the applicant presented. The SSA employee also stated that the wages listed were not in the SSA's suspense file and that the SSA had not verified the IRS W-2 forms.
- A November 15, 2005 letter from the applicant to CIS wherein the applicant refers to his past conduct as benign, deceitful actions that were worthwhile to live in the United States.
- An affidavit dated November 14, 2006 signed by [REDACTED] who declares: that she has been acquainted with the applicant since June 1981; that the applicant resided at [REDACTED], Los Angeles, California from February 1981 to February 1989; that the applicant is currently her tenant and has been her tenant for ten years; that she met the applicant's mother on Thanksgiving in 1981 and that she and the applicant's mother became close friends; that the applicant helped his mother until his mother returned to Guatemala; and that the longest time she had gone without seeing the applicant is one month over the 26 year period she had known him.
- A second statement from the SSA showing the applicant's claimed earnings in 1981 and 1982 from the Los Angeles Philharmonic, a computer printout listing a summary of the

applicant's earnings for the years 1981 through 1997, and an authorization to release his social security personal earnings.

Although specifically noted in the AAO's July 23, 2008 NOID, the applicant failed to offer credible explanations regarding the following discrepancies, inconsistencies, and contradictions in sworn testimony:

- The applicant's last entry into the United States wherein the applicant indicates at part #16 of the April 11, 2005 Form I-687, that he last entered the United States on July 13, 2001 at the border without a visa and the record that shows the applicant attempted to enter the United States at the Houston Airport with fraudulent documents on July 13, 2001.
- The applicant's employment in the United States wherein the applicant indicates at part #33, that he was employed by [REDACTED] in Los Angeles from June 1983 to December 1988 and the Form I-687 signed and certified by the applicant on March 25, 1988 wherein the applicant indicates at part #36 that he was employed by "General Lab." in Los Angeles from June 1983 to present.
- Information submitted for the first time on appeal to show that the applicant received social security earnings in 1981 and 1982 from the Los Angeles Philharmonic, when he was 13 or 14 years old; information not previously disclosed on any Forms I-687 submitted.
- The omission of the applicant's entry into the United States in February of 1990 as described in the applicant's Form I-589 asylum application.
- The inconsistency in the location of the applicant's residence between November 1967 and February 1990 wherein the applicant states on the signed Form G-325A that he lived in Izabal, Guatemala from November 1967 to February 1990 and claims on the Form I-687 and in sworn testimony that he had lived in the United States since February 1981.
- The inconsistency in the applicant's sworn testimony to an immigration officer in July 2001 that he had lived in the United States for 13 or 14 years (approximately since 1987 or 1988) confirmed by the applicant's statement that he had fled Guatemala in 1988 and the applicant's claims on the Form I-687 and sworn testimony that he had resided in the United States since February 1981.

As observed above, the applicant in rebuttal did not address the inconsistencies, deficiencies, and contradictions in the record instead again asserting that CIS disregarded the federal court order and in particular had not used good faith and reasonable efforts to distribute the "Settlement Agreement." The applicant's only reference to any of the inconsistencies detailed in the AAO's NOID is a reference to his Form I-589, Application for Asylum, wherein he appears to acknowledge that the Form I-589 was questionable and contradictory as he had to "safeguard himself" and his "only purpose was to meet the requirement and to [be] allowed to honestly work for a living." The applicant's submission of an excerpt of a verse from an unidentified version of the Christian Bible; an excerpt from the Washington Post, dated March 11, 1999 with the title *Clinton: Support for Guatemala Was Wrong*; and the Instructions for filing the I-765 noting the required fee of \$340 are not relevant or probative in the matter at hand.

The AAO finds that the applicant signed the Form G-325A noted above and is responsible for the contents of that form. Likewise, the applicant signed the Forms I-687 listed above and is responsible for the contents of those forms. The contradictory information contained in the forms submitted regarding the applicant's residence during the requisite time period has not been explained. The applicant's sworn testimony to an asylum officer on July 13, 2001 further confirms the information contained in the applicant's Form I-589 asylum application filed May 21, 1991, that is that the applicant resided in Guatemala until some time after 1988 when he entered the United States and applied for asylum. The AAO finds that the applicant misrepresented his date of entry to the United States and his residence in the United States during the requisite time period, and the applicant's statements, the affidavit submitted, and the photocopied documents submitted in support of his claim of residence in the United States are insufficient to overcome this finding.

The record does not contain copies or originals of the applicant's IRS Forms W-2 for the 1981 to 1991 years. The applicant has not provided these forms to the AAO for review. The information presented from the Social Security Administration is based solely on the applicant's claim that he worked during those years. The record does not contain evidence from the applicant's employers substantiating that the applicant worked in the United States during this time period. The applicant has not explained the inconsistency in the names of his employers from June 1983 to December 1988 as contained in the Form I-687 filed March 25, 1988 and is contradicted by the April 1, 2005 Form I-687 filed April 11, 2005. The applicant has not explained his failure to initially indicate that he worked for the Los Angeles Philharmonic in 1981 and 1982. The AAO finds that the applicant has misrepresented his employment from 1981 to 1988 to CIS and to the Social Security Administration in an effort to establish his residence in the United States during the requisite time period. The applicant's statements, the affidavit submitted and the photocopied documents submitted in support of his claim of residence in the United States are insufficient to overcome this finding.

The fact that the applicant has signed at least three separate immigration forms with significantly conflicting information regarding his entry in the United States and his employment for the period from before 1982 through 1988 establishes that he utilized documents in a fraudulent manner and made material misrepresentations in an attempt to establish his residence within the United States for the requisite period. In addition, the AAO finds that the applicant submitted unsubstantiated information to CIS and the Social Security Administration to support and confirm his employment. Further, the AAO notes that the applicant has acknowledged his past conduct as deceitful although reasoning that such conduct was benign and worthwhile to live in the United States. The AAO does not share the view that deceit when used to obtain an undeserved immigration benefit is benign but rather that such deceit constitutes misrepresentation and results in inadmissibility. 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 AAO finds that the applicant by engaging in such actions has seriously undermined his own credibility as well as the credibility of his claim of continuous residence in this country for the requisite period. 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 his 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, 591-92 (BIA 1988).

The AAO has reviewed: the photocopy of a document titled "Notice of Change of Terms in Tenancy" issued to [REDACTED] (child) [REDACTED] dated October 1, 1981; a photocopy of a receipt issued to the applicant dated February 10, 1982 by the La Brea Family Dental Practice; a photocopy of a receipt from the Southern California College of Optometry issued to the applicant for an examination dated August 16, 1981; a photocopy of a letter on the letterhead of Wienerschnitzel dated April 26, 1985 issued to the applicant informing the applicant that he would not be hired at that time; a photocopy of a letter dated October 24, 1984 from the new accounts department of BW&A rejecting the applicant's application for credit due to a discrepancy in your credit information (the AAO notes that the applicant would have been 17 when the letter was issued); and a letter dated January 18, 1988 from a financial services representative at the Bank of America indicating that the applicant maintained a savings account with the bank and that the account had been opened since September 1982. The AAO notes the evidentiary rule at 8 C.F.R. § 245a.2(d)(6) which provides: "[i]n judging the probative value and credibility of the evidence submitted, greater weight will be given to the submission of original documentation." In light of this evidentiary rule, the fact that photocopies would not clearly indicate alterations or substitutions as would originals of the documents, and the overall evidentiary context of this proceeding, which includes the applicant's above noted misrepresentations, the AAO does not accord any significant evidentiary weight to the photocopies of these documents.

The AAO has also reviewed the photocopies of the first page of [REDACTED] (the applicant's mother) Internal Revenue Service (IRS) Forms 1040, Individual Tax Return with an IRS Form W-2, Wage and Tax Statement superimposed on the page, for the years 1981, 1982, and 1983, listing the applicant as a dependent. For the same reasons noted above, the AAO does not find photocopies of partial uncertified tax returns probative in this matter.

The AAO observes that the letter dated January 18, 1988 from a financial services representative at the Bank of America indicating that the applicant maintained a savings account with the bank and that the account had been opened since September 1982, does not appear to be a photocopy; however, opening and maintaining a savings account does not establish continuous residence. In light of the applicant's above noted misrepresentations, the lack of documentation supporting the assertions of the letter, and the general context of the letter, the AAO does not accord significant evidentiary weight to this document in establishing the applicant's continuous residence in the United States for the requisite time period.

The AAO has also reviewed the November 14, 2006 affidavit signed by [REDACTED] who declares: that she has been acquainted with the applicant since June 1981; that the applicant resided at [REDACTED] Los Angeles, California from February 1981 to February 1989; that the applicant is currently her tenant and has been her tenant for ten years; that she met the applicant's mother on Thanksgiving in 1981 and that she and the applicant's mother became close friends; that the applicant helped his mother until his mother returned to Guatemala; and that the longest time she had gone without seeing the applicant is one month over the 26 year period she had known him. The AAO finds that the affiant does not include details about the applicant during the attested periods and about the applicant's association with the affiant that would demonstrate the truth of the affidavit's assertions regarding the applicant's residence. The affidavit does not contain details or information that would assist in verifying the asserted association. The extent of the information that the affiant provides about her relationship with the applicant is minimal. The generality of

the information and lack of detail regarding the circumstances and events of her interactions with the applicant undermine the reliability of the information in the affidavit.

The AAO issued a notice to the applicant on July 23, 2008, informing him 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. On August 12, 2008, the AAO received a statement from the applicant in response and as noted above, 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 also 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 any such evidence and has not overcome the basis for a finding of fraud. The AAO concludes that the applicant intentionally misrepresented his entry date of February 1981 into the United States and his continuous residence in the United States for the requisite time period in order to appear eligible to receive status as a temporary resident pursuant to Section 245A of the Immigration and Nationality Act.

The absence of probative and credible documentation and the conflicting evidence and contradictory claims in the record seriously undermine the credibility of the applicant's claim of residence in this country for the requisite period, as well as the credibility of the documents submitted in support 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.

In addition, as the record reflects that the applicant has submitted contradictory applications and made material misrepresentations to gain lawful status in the United States, 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.