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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE: [Redacted] Office: ATLANTA
MSC 06 097 11307

Date: OCT 07 2008

IN RE: Applicant:

[Redacted]

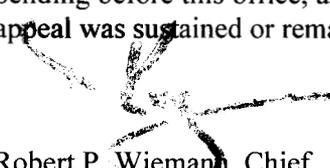
APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the
Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a.

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 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.


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, Atlanta, Georgia. The matter 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 (the 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 had continuously resided in the United States during the requisite period.

On appeal, counsel asserted (1) that the director incorrectly denied the application based on the misapprehension that the applicant did not submit a response to a notice of intent to deny (NOID), and (2) that the director incorrectly asserted that the AAO has jurisdiction over the instant appeal. Notwithstanding that counsel made no effort to preserve it for appeal, this decision will also address the substantive issue, whether the applicant has demonstrated his continuous residence in the United States during the requisite period.

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 (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 applicant 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 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.

The pertinent evidence in the record is described below.

- The record contains a declaration by the applicant dated April 3, 1990. Although that declaration is headed, "Affidavit," and states that it was declared "under penalty of law," it contains no indication that the applicant swore to it before any official authorized to administer oaths. That document is not, therefore, an affidavit. On that declaration the applicant stated that he entered the United States during 1980 and that he had last been absent from the United States from July 1987 to August 1987.
- The record contains affidavits, dated April 14, 1990, from [REDACTED] and [REDACTED]. The affiants state that the applicant left the United States during July 1987 and returned during August 1987.
- The record contains an affidavit dated November 5, 2001 from [REDACTED]. The affiant stated that he has known the applicant since birth. He further stated that he met the applicant in Cleveland, Mississippi during May 1980 and "kept in touch with him since then."
- The record contains an affidavit dated November 13, 2001 from [REDACTED]. The affiant stated that he has known the applicant since May 1980. He stated that he employed [REDACTED].

the applicant's father at his motel from May 1980 through March 1986, and has been in touch with the applicant since then, except when he was in India for three weeks from July 1987 to August 1987.

- The record contains an undated declaration from the applicant. The applicant stated that when he came to the United States he and his father lived at the motel where his father worked. The applicant further stated, "I was only 13 years old [then and] did not work as an employee." Further still, the applicant stated, "I have tried to find a church we were going and school recorded where I was in school but been 25 years no one was above to find those thing." [Errors in the original.] This office interprets that statement to mean that although he attended church and school no records of that attendance are available.
- The record contains an undated declaration from [REDACTED] of Cleveland, Mississippi. The declarant stated that the applicant stayed with his father from 1982 to 1986.
- The record contains a copy of the applicant's Social Security Statement. That statement shows that the applicant had earned income in the United States during 1987 and 1988, and most subsequent years. It does not show any income during previous years. During 1987 the applicant earned \$1,964. During 1988 the applicant earned \$23,130.
- The record contains two photocopies of 1988 Form W-2 Wage and Tax Statements. One of those photocopied W-2 forms shows that Welsh Enterprises, in Vernon Hills, Illinois, paid the applicant \$10,790 during that year. The other photocopied W-2 form is largely illegible, but shows that a company in Desplaines, Illinois paid the applicant \$1,540 during that same year.
- The record contains copies of two report cards that the Cleveland High School, in Cleveland, Mississippi, issued to the applicant. Those report cards show that the applicant was in the 11th grade, but do not contain a date or even indicate the calendar or academic year. When those report cards were issued is unknown to this office.
- The record contains a photocopy of an envelope addressed to the applicant, with a return address in India. The envelope bears a five rupee Indian stamp that pictures a solar panel. The postmark on that envelope is dated November 3, 1981.

The record contains no other evidence pertinent to the applicant's residence in the United States during the salient period.

In a Notice of Intent to Deny (NOID), dated October 2, 2007, the director noted various discrepancies in the record and stated that the applicant failed to demonstrate his entry into the United States prior to January 1, 1982, and continuous residence during the requisite period. The director granted the applicant thirty days to submit additional evidence.

Counsel responded to the NOID in a letter dated October 31, 2007. Counsel argued that the perceived discrepancies relied upon by the director were insufficient to justify denying the application.

In an Amended Notice of Intent to Deny, dated February 7, 2008, the director cited the quality of the applicant's evidence in finding it insufficient to prove the applicant's claim of continuous residence in the United States during the requisite period. The director stated that CIS, in determining whether the evidence was sufficient, had considered whether the applicant's affiants included proof of identity, proof that the affiants were in the United States during the requisite period, and proof that the affiants had some relationship with the applicant during the requisite period. The director noted that the only arguably contemporaneous evidence in the record is the report card described above.

In a response dated March 5, 2008 counsel argued that the evidence submitted is sufficient to show the applicant's eligibility. In the Notice of Decision, dated April 11, 2008, the director denied the application based on the applicant's failure to demonstrate his continuous residence in the United States during the requisite period.

On appeal, counsel submitted no additional evidence. In a brief, counsel argued that the director incorrectly denied the application based on the misapprehension that the applicant did not submit a response to a notice of notice of intent to deny. Counsel submitted a copy of the applicant's response to the notice of intent to deny and evidence that it was timely submitted. The applicant's response will be considered on appeal.

Counsel further argued that the director erred in directing that the decision be appealed to the AAO. Counsel noted the CSS/Newman Settlement Agreements require that appeals taken from denials of CSS/Newman class membership must be referred to a special master, rather than to AAO. This office will first address counsel's assignment of procedural error, before discussing the decision on the merits of the case.

Under the CSS/Newman Settlement Agreements, if the director finds that an applicant is ineligible for class membership, the director must first issue a NOID, explaining any perceived deficiency in the applicant's Class Member Application, and must provide the applicant 30 days to submit additional written evidence or information to remedy the perceived deficiency. Once the applicant has had an opportunity to respond to the NOID, if the applicant has not overcome the director's finding, then the director must issue, to both counsel and the applicant, with a copy to class counsel, a written decision denying the application for class membership. The notice shall explain the reason for the denial of the application, and notify the applicant of his or her right to seek review of such denial by a special master. CSS Settlement Agreement paragraph 8 at page 5; Newman Settlement Agreement paragraph 8 at page 7.

The decision in the instant case, however, does not rest on the issue of class membership. The director found that the applicant had failed to demonstrate his continuous residence in the United States during the requisite period. The director did not dispute that the applicant is a class member, but found that he is ineligible because he has not demonstrated the required residence. The director

correctly stated that appeal in this matter should be directed to the AAO. The balance of this decision will pertain to the decision on the merits.

In processing the appeal in this matter, this office consulted Volume three of the *2007 Scott Standard Postage Stamp Catalogue*. The above-described stamp on the envelope addressed to the applicant is shown on page 836 of that catalog and is listed as catalogue number 1200 A771. The catalogue shows that the stamp's date of issue as January 1, 1988. Such a stamp could not have been placed on an envelope before it was mailed during 1981. This appears to demonstrate that the applicant submitted falsified evidence in support of the instant application.

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, the applicant must resolve any inconsistencies in the record with competent, independent, objective evidence. Attempts to explain or reconcile such inconsistencies, absent competent objective evidence sufficient to demonstrate where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). That the applicant submitted falsified evidence in support of the instant application not only destroys the evidentiary value of that particular piece of evidence, but greatly diminishes the evidentiary value of all of the applicant's evidence and the credibility of all of his assertions.

The AAO issued a notice to both the applicant and counsel on July 22, 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, 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 15 days to provide substantial evidence to overcome, fully and persuasively, these findings. The applicant did not respond to that notice. This office will adjudicate the appeal based on the evidence in the record.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate entry into the United States prior to January 1, 1982, and continuous residence during 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 any such evidence and, as a result, all of his evidence is thoroughly impeached.

The evidence must be evaluated not by the quantity of evidence alone but by its quality. 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. Given the paucity of credible supporting documentation the applicant has failed to meet his burden of proof and failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through the date he attempted to file a Form I-687 application, as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M--*, *supra*. The applicant is, therefore, ineligible for temporary

resident status under section 245A of the Act on this basis. The application was correctly denied on that basis, which has not been overcome on appeal. The appeal will be dismissed.

In addition, as the record shows that the applicant has submitted fraudulent evidence 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. This decision constitutes a final notice of ineligibility.