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

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[redacted]

FILE: [redacted] Office: NEWARK Date: AUG 0 8 2007
MSC 05 308 11921

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, Newark, New Jersey, 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. The district director also denied the application because she found the applicant had not established that he was a class member in the CSS/Newman class action lawsuit. 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 reiterates his claim of continuous residence in the United States during the requisite period and stated that he had submitted all the requested items to establish his eligibility for temporary resident status.

The district director erred in denying the application because the applicant had not established that he was eligible for class membership pursuant to the CSS/Newman Settlement Agreements. If the district director believed that the applicant had not established that he was eligible for class membership pursuant to the CSS/Newman Settlement Agreements, she should have issued a notice of intent to deny the application explaining the perceived deficiency in the applicant's CSS/Newman Class Membership Application and providing the applicant thirty days to submit additional written evidence or information to remedy the perceived deficiency. In this case, the district director failed to issue a notice of intent to deny the applicant on this basis. Rather, the district director adjudicated the Form I-687 application on the merits, finding that the applicant had not established continuous unlawful residence in the United States during the requisite period. By adjudicating the application on the merits, the district director effectively found the applicant to be eligible for class membership. Therefore, the district director's finding that the applicant failed to establish that he was eligible for class membership pursuant to the CSS/Newman Settlement Agreements will be withdrawn and the appeal from the denial of the application based on the continuous residence issue will be adjudicated *de novo*.

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 August 4, 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] Bronx, New York" from November 1981 to June 1987 and at "[redacted] Brooklyn, New York" from August 1987 to July 2001.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant submitted an affidavit dated July 18, 2005, from [redacted] of Bronx, New York. [redacted] stated that she had personal knowledge that the applicant had lived in the United States since November 1981 and that the applicant traveled to Nigeria on business from July 1987 to August 1987. [redacted] did not provide any specific information such as the basis of her knowledge that the applicant has lived in the United States since November 1981, the basis of her acquaintance with the applicant, or the applicant's addresses in the United States throughout the requisite period.

The applicant also submitted an affidavit dated July 19, 2005, from [redacted] stating that he had known the applicant since 1982, when he met the applicant at a wedding in the Bronx, New York. The applicant subsequently submitted a second affidavit from [redacted] dated November 14, 2005. In this affidavit [redacted] explained that he resided at [redacted] Bronx, New York" when he first met the applicant in 1982. [redacted] states, "I am aware that in October 1981, [redacted] came here with his wife and child to the United States." [redacted] further stated that the applicant resided at "[redacted] Bronx, New York" from 1981 to 1987 and then moved to Brooklyn in 1987. Since [redacted] first met the applicant in 1982, his statement regarding the applicant's date of entry into the United States is second-hand information provided to him by the applicant.

The applicant also submitted a Certificate of Recognition dated November 9, 2005, signed by [redacted] Quaker United Nations Representative and convener of the Sri Lankan Dialogue. The certificate of recognition states that the applicant led The Association of Sri Lankan Muslims in North America (TASMINA) and participated in cross-community dialogue and action through the Sri Lankan dialogue of the American Friends Service Committee, New York Metropolitan Regional Office. The certificate states, "[s]ince 1983 from the United States, [redacted] contributed continuously for the promotion of non-violence and coexistence with the minority community in Sri Lanka."

The applicant submitted photocopies of himself and his family with handwritten notations dating the photographs in 1982, 1983, 1984, and 1985. These photographs could have been taken at any time. There is no detail in any of the photographs that would date them to a specific year other than the handwritten notations beneath the photographs.

The applicant included an undated social security denial notice and a photocopy of his Social Security Statement dated May 31, 2005. It is noted that this document reflects no income in the United States prior to 1988.

The applicant provided submitted a lease agreement dated November 1, 1981, between Amalgamated Realty Corporation and the applicant and his wife, [redacted] for a rental unit located at [redacted] Bronx, NY 10467. The lease was for a three-year period beginning on November 1, 1981, and ending on October 31, 1984, for a monthly rent of $300.00, a security deposit of $450.00, and a yearly rent of $3600.00. There is a block at the bottom of the second page of the lease that reads as follows:

> EPA and HUD Lead Paint Regulations, Effective September 6, 1996. (December 6, 1996 for owners of 3 to 4 residential dwellings.)
>
> Landlords must disclose known lead-based paint and lead-based paint hazards of pre-1978 housing to tenants. Use the following BLUMBERG LAW PRODUCTS (800 LAW MART) to comply: 3150 Lead Paint Information Booklet, 3141 Lead Paint Lease Disclosure Form.

This disclosure information relating to legislation effective on September 6, 1996, would not have appeared on a lease agreement executed in November 1981, fifteen years earlier. Furthermore, some of the typed rental information on the lease agreement appears to have been altered.

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.

It appears that the applicant has submitted a fraudulent document and made material misrepresentations in an attempt to establish continuous residence in the United States during the requisite period. 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 under any visa classification, immigrant or nonimmigrant pursuant to section 212(a)(6)(C) of the Act by committing acts constituting fraud and willful misrepresentation.

The AAO issued a notice to the applicant on June 13, 2007, informing him that it was the AAO's intent to dismiss his appeal based upon the fact that he submitted a fraudulent rental agreement and made material misrepresentations in an attempt to establish his 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, states in a letter dated June 26, 2007:

> You have claimed that this lease agreement that is fraudulent based of a block that appears at the bottom of the second page. Because this block contains disclosure information relating to legislation effective on September 6, 1996, you say that such wording would not have appeared on a lease agreement executed in November 1981. You are right in making this assumption, but what you have not considered is that the lease agreement that I submitted is not the original document of the lease that I executed on November 1981. You see I did not have the original copy of the lease agreement that I executed on November 1981 and that is why I submitted to you this copy of that original lease document. I obtained this lease agreement document form Amalgamated Realty Corporation after 1996, and that is why this document that you have in front of you has this block with disclosure information relating to legislation in 1996. I saw no problem in submitting a copy of the original since the original was not available. I myself am a landlord, and I have furnished for my former tenants copies of pre-dated leases upon their request. So you see that it was never my intention to submit any fraudulent documentation.

The applicant has not submitted an original 1981 rental agreement, but rather a re-created lease agreement backdated to 1981. The applicant has not submitted any independent evidence to corroborate his claim that this re-created lease is an accurate reproduction of an original lease purportedly executed in November 1981. The applicant did not identify the lease agreement as a re-creation an original 1981 lease agreement when he submitted it as evidence to establish continuous residence in the United States during the requisite period. Furthermore, the lease agreement document is yellowed, stained, and spotted in such a manner as to suggest that the applicant attempted to age the document artificially to make it appear to be the original 1981 lease agreement. The applicant's submission of this fraudulent lease agreement raises serious questions regarding the credibility of the other documentation submitted by the applicant in support of his claim.

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).

The applicant, on appeal, submits a letter dated June 25, 2007, from [redacted] of [redacted], Bronx, New York. [redacted] states that the applicant was at his mosque "for almost two days" trying to find former friends and neighbors who could attest to his residence in the United States during the requisite period, but was having difficulty locating such people because "nearly 25 years have passed."

The applicant also submits an affidavit dated June 25, 2007, from [redacted] of the Bronx, New York. [redacted] states that he lived in the Bronx, New York, in 1981 and knew the applicant "since 1981 when he was residing at [redacted] Bronx, New York." [redacted] does not provide any information regarding the basis of his acquaintance with the applicant.

The absence of sufficiently detailed supporting documentation and the existence of derogatory information that establishes the applicant used a fraudulent lease agreement and made material misrepresentations 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 submitted a fraudulent document and made material misrepresentations in an attempt to establish continuous residence in the United States during the requisite period rendered him inadmissible to this country pursuant to section 212(a)(6)(C) of the Act. By filing the instant 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.