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

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FILE:

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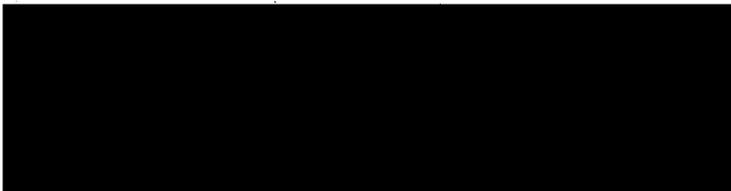
Date: FEB 22 2007

IN RE:

Applicant: [Redacted]

APPLICATION: Application for Temporary Resident Status under Section 210 of the Immigration and Nationality Act, as amended, 8 U.S.C. 1160

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if the matter 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for temporary resident status under was denied by the District Director, Dallas, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed with a separate finding of fraud and inadmissibility.

The district director noted that the applicant had been absent from the United States for over 45 days, and denied the application because the applicant had not resided continuously in the United States during the requisite period. The district director also denied the application because the applicant submitted a fraudulent document in an attempt to establish his eligibility for temporary resident status.

On appeal, the applicant requests that he be granted temporary resident status. He submits additional affidavits from acquaintances attesting to his residence in the United States during the requisite period.

An applicant for temporary residence 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).

On his Application for Status as a Temporary Resident (Form I-687) the applicant claimed that he established a residence in the United States in 1978, and that he continuously resided in the United States since then. In block 35, where absences from the United States were to be listed, he indicated "none". The applicant submitted the following evidence to establish continuous residence in the United States during the requisite period:

1. an affidavit from [REDACTED], Personnel Director, [REDACTED] Mt. Pleasant, Texas, stating that the applicant worked for his company during the following periods: from October 17, 1978 to November 26, 1979; from January 24, 1980 to October 3, 1981; and, from October 7, 1983 to January 14, 1988, the date of the letter;
2. an affidavit from [REDACTED] purportedly an independent farm labor contractor, stating that the applicant worked for him in Dover, Florida, from October 20, 1981 to September 27, 1983, during seasonal agricultural work;
3. an affidavit from [REDACTED] stating that the applicant lived at 1 [REDACTED] Mt. Pleasant, Texas, from June 1985 to November 1987 and from January 1988 until March 1, 1988;
4. a Texas birth certificate indicating a son was born to the applicant and [REDACTED] in Mt. Pleasant, Texas, on December 8, 1984; and,
5. an affidavit from [REDACTED] the applicant's landlord, stating that the applicant lived at [REDACTED], Mt. Pleasant, Texas, from September 1983 to June 1985.

During his legalization interview, the applicant admitted under oath before an Immigration Officer that he left the United States in November 1981 to return to Mexico. He stated that he remained in Mexico until October 1983, when he returned to the United States and began working for Pilgrims Pride in Mt. Pleasant, Texas. The applicant further admitted that the employment letter from [REDACTED] was a fraudulent letter that he purchased from Mr. [REDACTED] for \$50.00.

The district director denied the application on March 28, 1988, because the applicant's prolonged absence outside the United States disrupted his continuous residence in the United States during the requisite period and also because the applicant submitted a fraudulent employment document in an attempt to conceal his absence outside the United States.

On appeal, the applicant does not address the grounds for the denial of his application. He merely requests that his case be given consideration. On December 31, 1992, the applicant submitted the following additional affidavits to supplement his appeal:

6. a "fill-in-the-blank" letter from [REDACTED] stating that she was the applicant's landlord and that he resided at [REDACTED], Mt. Pleasant, Texas, from April 15, 1980 to July 15, 1982;
7. an affidavit from [REDACTED] stating that he had known [REDACTED] since 1981, and that the applicant is her husband;
8. an affidavit from [REDACTED] stating that she has known [REDACTED] since 1981 and that [REDACTED] is her husband;
9. an affidavit from [REDACTED] stating that she has known [REDACTED] and her husband, [REDACTED], since 1982;
10. an affidavit from [REDACTED] stating that he has known A [REDACTED] since 1982, at which time the applicant was working at Pilgrims Pride East Plant;
11. an affidavit from [REDACTED] stating that she has known [REDACTED] since December 1981, at which time Ms. [REDACTED] and the applicant lived on [REDACTED] West in Mt. Pleasant, Texas; and,
12. an affidavit from [REDACTED] stating that he has known [REDACTED] since December 1981, at which time Ms. [REDACTED] and her husband, [REDACTED] were living on [REDACTED] in Mt. Pleasant, Texas.

The applicant fraudulently indicated on the Form I-687 that he did not have any absences outside the United States during the required period. He subsequently admitted under oath that he had in fact been absent from the United States from November 1981 to October 1983, an absence of almost two

years. The applicant also admitted under oath that the employment affidavit from [REDACTED] No. 2 above) was a fraudulent document he purchased from Mr. [REDACTED] for \$50.00. Mr. [REDACTED] stated in the fraudulent employment letter that the applicant worked for him doing seasonal agricultural work in Dover, Florida, from October 20, 1981 to September 27, 1983, the same period during which the applicant subsequently admitted he was living in Mexico. This letter represents an obvious attempt to conceal the applicant's extended absence outside the United States.

The applicant has not addressed these issues on appeal. He subsequently submitted affidavits from seven individuals attesting to their acquaintance with the applicant and his wife, [REDACTED]. There are numerous inconsistencies in the statements made in these affidavits and the information provided by the applicant on the Form I-687.

Ms. [REDACTED] states in her affidavit that she was the applicant's landlord and that the applicant and his wife resided at [REDACTED] Pleasant, Texas, from April 15, 1980 to July 15, 1982. This statement contradicts the applicant's statement under penalty of perjury on the Form I-687 that he lived and worked in Dover, Florida, from October 1981 through September 1983. It also contradicts the applicant's later admission under oath that he was outside the United States from November 1981 to October 1983.

Ms. [REDACTED] states in her affidavit that she has known the applicant and [REDACTED] since 1981 and that they resided at [REDACTED] Mt. Pleasant, Texas. These statements directly contradict the applicant's admission under oath that he was outside the United States from November 1981 through October 1983, and the applicant's statement under penalty of perjury on the Form I-687 that he lived and worked in Dover, Florida, from October 1981 to September 1983.

[REDACTED] states in his affidavit that he has known the applicant and his wife since 1982, when the applicant was working at the Pilgrims Pride East Plant. This statement directly contradicts the employment letter from Pilgrims Pride, which indicates that the applicant worked for that company from October 17, 1978 to November 26, 1979, from January 24, 1980 to October 3, 1981, and, from October 7, 1983 to January 14, 1988. This statement also contradicts the applicant's admission under oath that he was outside the United States from November 1981 to October 1983 and his statement under penalty of perjury on the Form I-687 that he lived and worked in Dover, Florida, from October 1981 through September 1983.

[REDACTED] a and [REDACTED] state in their affidavits that they have known [REDACTED] and her husband, [REDACTED]s, since December 1981, at which time they lived on [REDACTED] Mt. Pleasant, Texas. These statements directly contradict the applicant's admission under oath that he was outside the United States from November 1981 to October 1983.

They also contradict the applicant's statement under penalty of perjury on the Form I-687 that he was living and working in Dover, Florida, from October 1981 through September 1983. The applicant has not provided any explanation for these contradictions and discrepancies.

It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 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.

Under BIA precedent, a material misrepresentation is one which "tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in a proper determination that he be excluded." *Matter of S- and B-C-*, 9 I&N Dec. 436, 447 (BIA 1961).

The applicant signed the Form I-687, thereby certifying under penalty of perjury that the information provided on the application is true and correct. By falsely declaring on the Form I-687 that he did not have any absences outside the United States during the requisite period and by submitting a false employment document in an attempt to conceal his prolonged absence outside the United States, the applicant has sought to procure an immigration benefit provided under the Act through the use of fraud and willful misrepresentation of a material fact. Because the applicant has failed to provide independent and objective evidence to overcome the director's finding of fraud, we affirm the finding of fraud.

In addition, an applicant for temporary resident status under the pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a, must establish that he or she is admissible as an immigrant. 8 C.F.R. § 245a.2(d)(5). Because of his attempt to procure an immigration benefit under the Act through fraud the willful misrepresentation of a material fact, we find that the applicant is inadmissible under section 212(a)(6)(C) of the Act.

The applicant's failure to submit independent and objective evidence to overcome the preceding derogatory information seriously compromises the credibility of the applicant and the remaining documentation. 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.

Due to his prolonged absence outside the United States, the applicant has failed to establish that he resided in continuous unlawful status in the United States from before January 1, 1982 through March 12, 1988, the filing date of his application, as required by section 245a of the Act. In addition, because he has attempted to procure an immigration benefit under the Act through fraud

and willful misrepresentation of a material fact, he is inadmissible under section 212(a)(6)(C)(i) of the Act. Given this, he is ineligible for temporary resident status under section 245a of the Act.

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

FURTHER ORDER: The AAO finds that the applicant knowingly submitted fraudulent documents in an effort to mislead Citizenship and Immigration Services and the AAO on elements material to his eligibility for a benefit sought under the immigration laws of the United States. Accordingly, he is inadmissible under section 212(a)(6)(C)(i) of the Act.