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

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[redacted]

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FILE: [redacted] Office: NEW YORK Date: JUN 13 2007

MSC 05 207 12294

IN RE: Applicant: [redacted]

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:

[redacted]

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.

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

The director determined that 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 between May 5, 1987 to May 4, 1988. Therefore, the district director concluded 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 reiterated his claim of residence in this country since May 1981 and asserts that he has submitted sufficient documentation in support of such claim. The applicant did not include any additional documentation in support of his appeal.

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. *See* section 245A(a)(2) of the Immigration and Nationality Act (Act), 8 U.S.C. § 1255a(a)(2) and 8 C.F.R. § 245a.2(b).

An alien 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. *See* section 245A(a)(3) of the Act and 8 C.F.R. § 245a.2(b)(1).

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. *See* Paragraph 11, page 6 of the CSS Settlement Agreement and paragraph 11, page 10 of the Newman Settlement Agreement.

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 including affidavits is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The regulation at 8 C.F.R. § 245a.2(d)(3)(v) states that attestations by churches, unions, or other organizations to the applicant's residence by letter must: identify applicant by name; be signed by an official (whose title is shown); show inclusive dates of membership; state the address where applicant resided during membership period; include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; establish how the author knows the applicant; and, establish the origin of the information being attested to.

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 residence 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 from 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 April 26, 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 listed [redacted] New York, from May 1981 to February 1988, and [redacted] Flushing, New York from March 1988 to December 1994. At part #32 where applicants were asked to list absences from the United States since entry, the applicant listed a family visit to Malaysia from August 1985 to September 1985. It is noted that the applicant did not indicate having returned to Malaysia any other time until February 1989. At part #33 where applicants were asked to list employment in the United States since entry, the applicant stated that he worked as a waiter for Hu Nan Chinese Restaurant in New York, New York from June 1981 to November 1991. The applicant

provided no supporting documentation of his employment, other than a photograph of himself and others that he identified as having been taken at Hu Nan Restaurant.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant submitted a copy of the biographical pages of his Malaysian passports that were issued on December 19, 2003 and December 4, 1979, as well as a copy of his marriage certificate indicating he was married on November 3, 1988 in Malaysia. The applicant also submitted a copy of his B-1/B-2 visa stamp issued on August 14, 1985 and of a stamp in his passport indicating he entered the United States on September 7, 1985. The applicant also included an unsworn statement stating that he entered the United States illegally on May 1, 1981, traveled to Malaysia in August 1985, returned to the United States with a visa in September 1985, and attempted to file under the amnesty program in July 1987.

The record shows that the applicant was subsequently interviewed relating to his Form I-687 application on Monday, February 6, 2006. The notes of the interviewing officer demonstrate that the applicant stated he entered the United States in May 1981. The notes also indicate the applicant went to Malaysia for less than one month in 1985 and returned to the United States with a visa.

In response to the notice of intent to deny issued on February 9, 2006, the applicant provided a copy of his I-797A Approval Notice of B-2 status and I-94 card valid from September 7, 1985 to March 6, 1986, a bank book indicating bank activity from September 19, 1985 to September 30, 1988, and a sworn statement from [redacted]. In his statemen[redacted] explained that he has known the applicant since September 1981 when [redacted]s girlfriend was the applicant's neighbor on [redacted] in Flushing, New York. This statement is inconsistent with Form I-687 where applicant indicated he did not move to the Roosevelt Avenue residence until March 1988. [redacted]s statement is not accompanied by supporting evidence of [redacted] presence in the United States during the statutory period or by supporting evidence of [redacted]s relationship with the applicant.

The applicant also submitted a sworn statement from [redacted]. [redacted] stated that he has known the applicant since 1982 and that the applicant arrived in the United States in 1981. [redacted] also stated that he is aware that the applicant applied for amnesty in 1987 but was turned away because of a visit to Malaysia the year before. This statement is inconsistent with Form I-687, which indicates applicant returned to Malaysia in 1985 and does not state that the applicant returned to Malaysia in 1986. In addition, this statement does not confirm the applicant was present in the United States prior to January 1, 1982, since [redacted] stated he did not meet the applicant until 1982 and therefore has no personal knowledge of the applicant's activities prior to January 1, 1982. Lastly, the applicant did not provide any supporting documentation indicating that [redacted] was in the United States during the statutory period or of [redacted] relationship with the applicant.

The applicant also submitted three Applications for Remittance ("remittances") from United Orient Bank in New York, New York, dated May 8, 1982, January 11, 1983 and February 3, 1984. All three remittances list the applicant's address as 149 Pl. 2 Fl., Flushing, New York, and his home telephone number as "[redacted]" It is noted that it would have been impossible for the applicant to possess a telephone number with an area code of 718 while he was purportedly residing in Flushing, New York as reflected on

the remittances, because the 718 area code did not exist until 1985, when it was introduced to cover Queens, Brooklyn and Staten Island[redacted], *Additional Area Code Is Planned In New York,* The New York Times (April 19, 1990).

The applicant included a sublease agreement dated May 15, 1981, granting him a sublease of [redacted] Flushing, New York from May 15, 1981 to May 14, 1983. The sublease indicates it can only be changed by an agreement in writing signed by the parties. It is noted that the Over-Lease of the property was to end on December 31, 1983, more than four years prior to the date the applicant indicated on Form I-687 that he left this address. No documentation of an extension of the lease was provided by the applicant. The sublease agreement was not signed by a notary public, and the guarantor's signature was not witnessed.

Lastly, the applicant provided photocopies of several photographs. The applicant indicated that he is pictured in the photographs and that they were taken at various specified locations within the United States on December 10, 1981, 1982, September 18 and 19, 1983, and March 23, 1988. The applicant did not identify the other individuals in the photographs or specifically identify himself in the photographs.

The district director determined that the applicant had failed to submit sufficient evidence establishing his continuous residence in this country since prior to January 1, 1982, and, therefore, denied the application on May 17, 2006. In the notice of decision, the district director noted that the applicant listed the area code [redacted] on the remittances he provided. Specifically, she noted, since the area code [redacted] was not established until a date later than remittances provided by the applicant, "the evidence [the applicant has] submitted can only be considered as fraudulent and an overt attempt to deceive this Service into considering [the applicant's] eligibility for legalization under this program." The director found that, as a result of the fraudulent information the applicant provided, the remainder of the evidence he submitted cannot be considered credible or legitimate. Therefore, she found the applicant had not proven his eligibility for legalization by a preponderance of the evidence.

On appeal, the applicant reiterated his claim of residence in this country since January 1981 and asserted that he has submitted sufficient documentation in support of such claim. The applicant provided no explanation or supporting documentation relating to his phone number as listed on the remittances. Specifically, the applicant did not explain why documents he holds out as evidence of his activities from 1982 to 1984 would contain an area code that was not in use until a later date. Further, the applicant failed to provide any independent evidence that he ever possessed the telephone number listed on the remittances that would tend to indicate the evidence submitted by the applicant was not, in fact, fraudulent.

In summary, the applicant has provided evidence of residence in the United States relating to the 1981-88 period that is found to be fraudulent, and has submitted affidavits that lack sufficient detail and conflict with the applicant's testimony. Specifically, the affidavit from [redacted] conflict's with the applicant's testimony on Form I-687 and is not supported by evidence of [redacted]s presence in the United States during the statutory period or of his relationship with the applicant. Since [redacted]s affidavit stated that he met the applicant in 1982, he is unable to confirm first-hand applicant's residence in the United States since prior to January 1, 1982. [redacted] affidavit also conflicts with the applicant's testimony. In addition, [redacted]s affidavit is not supported by evidence of his presence in the United States during the

statutory period or of his relationship with the applicant. The applicant included a sublease agreement that was not signed by a notary public. He also included photographs but did not specifically identify himself or the other subjects in the photographs. Lastly, the applicant submitted documentation of his residence in the United States that is found to be fraudulent. The applicant provided no explanation or supporting evidence in response to this finding. 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. 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 (BIA 1988).

The absence of sufficiently detailed supporting documentation, the existence of conflicting evidence that contradicts critical elements of the applicant's claim of residence, and the existence of derogatory information that establishes the applicant used documents in a fraudulent manner and made material misrepresentations all seriously undermine the credibility of the supporting documents, as well as the credibility of the applicant's claim of residence in this country for the requisite period. Pursuant to 8 C.F.R. § 245a.2(d)(3), 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)(3) and *Matter of E- M-*, 20 I&N Dec. 77 (Comm. 1989).

Given the applicant's reliance upon supporting 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 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 rendered him inadmissible to this country pursuant to section 212(a)(6)(C) of the Act. By filing the instant application and submitting falsified documents, 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 falsified documents, we affirm our finding of fraud. This finding of fraud shall be considered in the current proceeding as well as any future proceeding where admissibility is an issue. 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.

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) of the Act.