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MSC-05-056-10051

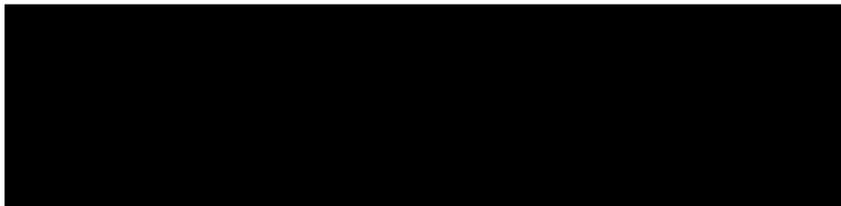
Office: New York

Date: JUL 18 2007

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:



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 be "Robert P. Wiemann".

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, 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 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 reiterates his claim of residence in this country for the requisite period. He also acknowledges that contradictory information had been included in a Form G-325A, Biographic Information, which he had signed in 2002 and submitted in support of a prior request for adjustment of status. The applicant asserts, however, that the preparer of his Form G-325A made a typographical error in entering the dates he resided in Bangladesh as January 1959 to August 1985 and that the applicant was unaware of the mistake at the time he signed the form. The applicant refers to prior documentation but does not submit additional documents, other than his own statement and a letter from counsel, 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. Section 245A(a)(2) of the Immigration and Nationality Act (Act), 8 U.S.C. § 1255a(a)(2). An 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. § 1225a(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 applicant 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; and Newman Settlement Agreement, paragraph 11 at page 10.

An applicant 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 applicant or 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 November 25, 2004. The director determined that the applicant had failed to submit sufficient credible evidence establishing his continuous residence in this country since prior to January 1, 1982, and, therefore, denied the application on May 5, 2006.

Prior to issuing the notice of denial, the director issued a notice of intent to deny the application on March 3, 2006, finding that the applicant had failed to submit sufficient credible evidence in support of his claimed residence in the United States since prior to January 1, 1982 because of a contradiction in his testimony. The director specifically determined that the applicant had claimed on his Form G-325A, Biographic Information, which he signed on April 19, 2002, that he resided in Bangladesh from January 1959 to August 1985; yet he stated at his interview on March 1, 2006, that he came to the United States on February 5, 1981. He was granted thirty days to respond to the notice and submit additional evidence in support of his claim of residence in this country since prior to January 1, 1982.

In response, the applicant submitted a rebuttal letter from his attorney and his own affidavit, both asserting that he left Bangladesh in 1981 and that "anything contradictory to that information is nothing but a clerical mistake or typo," and that he was not "well conversant of English and, for that reason, did not notice . . . what was actually written on the Form 325A." The applicant stated that he provided information to the person who helped him fill out the form and that person filled it out for him, and, although he signed the form, he was unaware of the mistake(s) being made. The applicant also submitted five additional affidavits prepared in March 2006. The director found that the information and documentation he submitted was insufficient to overcome the grounds for denial set forth in the notice of intent to deny, and issued a notice of decision on

May 5, 2006. On appeal, no additional information was submitted; counsel asserted, however, that CIS could have given more weight to the applicant's lack of knowledge of English and his claim that he could not verify a mistake regarding his dates of residence in Bangladesh.

The AAO notes that three of the five affidavits submitted to rebut the basis for the director's denial have no probative value, as they are not based on personal knowledge, but rather on second-hand information. The three affiants claim to be the applicant's former neighbors in Bangladesh, who state, in exactly the same language, "So far my Knowledge goes, I heard that he had left for the USA some 25/26 years back. I heard that he has visited Bangladesh sometimes after that." The affiants do not claim to have personal knowledge of the applicant's whereabouts during the requisite time period. The other two affidavits also lack credibility, as they are partially completed CSS/LULAC Legalization and LIFE Act Adjustment Forms which contain incomplete information regarding the affiants' residence or employment in the United States during the requisite time period and which state, again in identical language, that the affiants knew how the applicant entered the United States before 1982 because he told them that he had entered via the Bahamas to Miami and then went to New York. These declarations lack any relevant detail and contradict the applicant's own statement at his interview that in 1981 he traveled direct to Miami from Bangladesh and then flew to New York. The AAO finds that the applicant misrepresented his date of entry to the United States, and that the statements and the affidavits submitted in support of his claim, which lack credibility for the reasons stated, are insufficient to overcome this finding.

A review of the record in the applicant's case reveals the following additional inconsistencies and misrepresentations:

- In connection with his prior application for class membership pursuant to the CSS/Newman Settlement Agreements, the applicant submitted a Form I-687 with his signature, dated August 27, 1987. On that form he listed his children, including his twin sons, [REDACTED] and [REDACTED], and their dates of birth as March 18, 1988. This clearly shows that the Form I-687 could not have been prepared in 1987 as claimed.
- In support of his claims of residency during the requisite time period, the applicant submitted numerous affidavits, including (1) from [REDACTED] notarized on April 26, 1991, claiming that the applicant lived with him at [REDACTED] from June 1981 to December 1984; (2) from [REDACTED] on letterhead of [REDACTED] in Brooklyn, notarized on September 29, 2004, certifying that the applicant worked for him part time from 1981 to 1987; (3) from [REDACTED] on letterhead of Deluxe Home Improvements in Brooklyn, dated December 18, 1988 but notarized on March 8, 1994, certifying that the applicant lived at [REDACTED] and worked for Deluxe Home Improvements as a construction helper from July 1981 to February 1982; and (4) from two officials whose names are illegible, on letterhead of [REDACTED] of Brooklyn, dated May 18, 1985 but notarized on December 10, 1990, certifying that the applicant had contributed towards the development of the Center since February 1983. These affidavits contradict other affidavits in the record and the applicant's own statements or are not credible due to inconsistent internal dates.
- The applicant's Form I-687 application, currently pending on appeal, which was submitted on November 25, 2004, contains information contrary to information previously submitted. For

example, on the pending application the applicant lists his residence during the period from June 1981 to December 1985 as [REDACTED] Brooklyn, rather than [REDACTED] the address he claimed as his residence on the prior Form I-687 and which was confirmed in several affidavits. On the pending application the applicant lists his residence from January 1989 to December 2003 as 158 [REDACTED]. The applicant also submitted an affidavit from [REDACTED] notarized on September 19, 2004, confirming his addresses and dates of residence exactly as the applicant claimed on his pending application. This affidavit and the pending application directly contradict the prior application and affidavits noted above.

The fact that the applicant submitted an application that was allegedly prepared in 1987, but which contained information about the birth of his children in 1988; and the fact that he has signed at least three separate immigration forms with conflicting information regarding his places of residence for the period from before 1982 through 1988, and has submitted affidavits confirming this conflicting information 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. By engaging in such an action, he has seriously undermined 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. Because the applicant has made material misrepresentations and submitted fraudulent affidavits, we cannot accord any of his other claims any weight.

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 visa petition. 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 above derogatory information indicates that the applicant has misrepresented the date that he first arrived in the United States and thus casts doubt on his eligibility for this visa classification.

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 pursuant to section 212(a)(6)(C) of the Act by committing acts constituting fraud and willful misrepresentation.

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 issued a notice to both the applicant and counsel on June 28, 2007, informing them that it was the AAO's intent to dismiss the applicant's appeal based upon the fact that he 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 and a finding of fraud would be entered into the record. The applicant was granted

fifteen days to provide substantial evidence to overcome, fully and persuasively, these findings. On July 16, 2007, the AAO received a statement from the applicant in response, again claiming that the information on the Form G-325A had been mistakenly included by a preparer. However, he 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 since prior to January 1, 1982. As noted above, it is incumbent on the applicant to resolve inconsistencies by independent objective evidence, and attempts to explain conflicting accounts, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. at 591-92. The applicant has failed to provide any such evidence and has not overcome the basis for a finding of fraud.

The absence of sufficiently detailed supporting documentation and the existence of derogatory information that establishes that the applicant made material misrepresentations and used affidavits in a fraudulent manner to support contradictory claims 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 since prior to January 1, 1982 to May 4, 1988 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 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 fraudulent 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 fraudulent documents, we affirm our finding of fraud. The applicant failed to establish that he is admissible to the United States as required by section 245A(a)(4) of the Act; 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.