

PUBLIC COPY

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**



**U.S. Citizenship
and Immigration
Services**

LI

[Redacted]

FILE: [Redacted]
MSC-05-146-11733

Office: Los Angeles

Date: JUN 21 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: Self-represented

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, Los Angeles, California, 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 maintains that he has resided in the United States since December 1981. The applicant submitted a copy of a letter from his parents, dated December 18, 1981, granting him permission to travel to the United States with his cousin, [REDACTED]

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 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. § 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 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; and 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. 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.

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 filed a Form I-687, Application for Status as a Temporary Resident, and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, with CIS on February 23, 2005. At part #30 of the Form I-687 application, the applicant was asked to list all of his residences in the United States since his first entry. The applicant listed his first address in the United States as [REDACTED] and indicated that he resided at this address from June 1987 until May 1993. The applicant has not listed any other addresses prior to this date. At part #33 of the application form, the applicant was asked to list his employment history in the United States since his entry. The applicant showed his first employment in the United States to be with [REDACTED]. The applicant provides that he was employed in this position from June 1987 until 1997. The applicant has not listed any other employment information prior to this date. The fact that the applicant failed to show residence and employment information from prior to January 1, 1982 until June 1987, indicates that he was not living in the United States during this period. It should be noted that the applicant signed his I-687 application under penalty of perjury certifying that the information contained in the application is true and correct.

On appeal, the applicant submitted a written statement which provides, "[t]he person who brought me here is my cousin [REDACTED], he got a Power of Attorney letter from my parents in 1981 and I started to work as a gardener as soon as I arrived here in December 1981." However, this information is materially inconsistent with documentation contained in the applicant's record. On April 15, 1999, the applicant filed an EOIR-42B, Application for Cancellation of Removal and Adjustment of Status, with the Immigration Court. This application provides that the applicant first

arrived in the United States on *June 15, 1987*. The applicant indicated on this application that he has not traveled to the United States on any other dates. On August 7, 2000, during the applicant's removal hearing before the Immigration Judge, he provided *sworn* testimony that his first date of arrival in the United States was on *June 15, 1987*. The applicant submitted a clinical psychological evaluation as supporting documentation with his application. This psychological evaluation from [REDACTED] dated July 11, 2000, provides, "[t]hese parents first came to live and establish themselves in the US in about 1988. The husband, [REDACTED] has always been a working, productive, member in this society, with good personal and job stability [sic] reflected in the fact that he has been only in two jobs during this 12-13 year-period that he has lived in the US . . ." (emphasis added). Consequently, the evidence in the applicant's record shows that contrary to his written statement, he has not been residing in the United States since December 1981.

The applicant attempted to provide an explanation for these inconsistencies in the written statement he submitted on appeal. This statement provides, "[i]n order to file an application for Cancellation form EOIR 42B I needed to establish 10 years of continued residence in the USA. Because of that and based on the others applications I submitted to the service stating that I leaved [sic] the country on June 1987 I answered the arrival question as stated above. I though [sic] that since I have better proof of residency from 1987 to date I should use that date to file my application." However, this explanation fails to overcome the inconsistencies found in the applicant's oral testimony before the Immigration Judge and his clinical psychological evaluation, both of which indicate that he has not been residing in the United States since prior to January 1, 1982. The inconsistencies found in the applicant's record seriously diminish the credibility of his claim of continuous unlawful 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 of May 5, 1987 to May 4, 1988.

The AAO issued a notice to the applicant on May 17, 2007 informing him that it was the AAO's intent to dismiss his appeal based upon the fact that he has made material misrepresentations in an attempt to establish his residence within the United States for 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, 8 U.S.C. § 1182(a)(6)(C), as a result of his actions.

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 applicant was granted thirty days (plus three days for mailing) to provide substantial evidence to overcome, fully and persuasively, these findings. On June 18, 2007, the applicant responded to the notice of intent to dismiss with the following explanation:

Your conclusion to my appeal statement is based on the documentation contained in my record and more specific on the application form EOIR-42B, Application for Cancellation of

Removal and Adjustment of Status with the Immigration Court. You did not mention the explanation of why I stated 1987 as my arriving date to the USA (because that was the last day I entered the Country and not the first date). You also mentioned the Psychological evaluation from [REDACTED] dated July 11, 2000. I saw [REDACTED] one time in my life and for 20 minutes. At the beginning of the interview he asked me when did I last come [sic] to the USA I told him in 1987 and then he started to question my children, finally he send hid [sic] report to the Judge.

The applicant's own statement is not sufficient evidence to overcome the finding of misrepresentation. 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 applicant was notified in the AAO's intent to dismiss his appeal that he could not overcome the finding of misrepresentation by only offering a verbal explanation. Pursuant to the regulations at 8 C.F.R. § 245a.2(d)(6), an applicant must provide evidence of eligibility apart from his or her own testimony to meet his or her burden of proof. The applicant failed to resolve the inconsistencies in his record though the submission of independent and objective evidence.

The applicant also provided a letter from [REDACTED] counsel for the applicant during his removal hearing. This letter provides:

I represented the appellat [REDACTED] in Immigration Court and prepared his cancellation of removal application. I am writing this letter on behalf of [REDACTED] at his request. It appears that a mistake was made on the application regarding his original date of entry. Being uneducated and illiterate, it seems that [REDACTED] understood the question on his cancellation of removal application to be asking when his last date of entry was rather than when his original date of entry [sic].

Counsel's statement fails to explain the reason she did not attempt to remedy this alleged mistake during the applicant's removal hearing before the Immigration Judge. As stated above, on August 7, 2000, the applicant provided *sworn* testimony that his first date of arrival in the United States was on *June 15, 1987*. The transcript of the applicant's removal hearing provides the following:

- [REDACTED] TO [REDACTED]
- Q. Okay, and when did you first come to the United States?
A. I arrived June 15th of '87.
Q. Okay, where have you lived since 1987?
A. In 1987?
Q. Since.
A. Oh, since. I lived on the city of El Monte.

[REDACTED] has failed to provide any documentary evidence to support her claim that the applicant misunderstood the question regarding his first date of entry. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. The

unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The absence of sufficiently detailed supporting documentation and the existence of derogatory information, which establishes the applicant made material misrepresentations, undermines 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)(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 through the date he attempted to file a Form I-687 application with the Service, as required under 8 C.F.R. § 245a.2(d)(5).

Given the applicant's contradictory statements on his applications and his reliance upon documents with minimal 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 the date he attempted to file a Form I-687 application pursuant to 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.

Because the applicant has failed to provide independent and objective evidence to overcome, fully and persuasively, our finding that he engaged in the willful misrepresentation of a material fact, we affirm our finding of misrepresentation. The fact that the applicant made material misrepresentations in an attempt to establish his continuous residence within the United States for the requisite period renders him inadmissible pursuant to Section 212(a)(6)(C) of the Act, 8 U.S.C. § 1182(a)(6)(C). This finding of misrepresentation shall be considered in the current proceeding as well as any future proceeding where admissibility is an issue. Since the applicant failed to establish that he is admissible to the United States as required by Section 245A(a)(4) of the Act, 8 U.S.C. § 1255a(a)(4), he is ineligible to adjust to temporary resident status on this basis as well.

ORDER: The appeal is dismissed with a finding that the applicant willfully misrepresented of material fact. This decision constitutes a final notice of ineligibility.

FURTHER ORDER: The AAO finds that the applicant knowingly misrepresented a material fact 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, 8 U.S.C. § 1182(a)(6)(C).