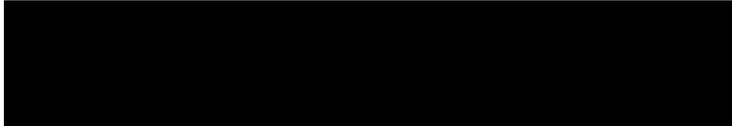




U.S. Citizenship  
and Immigration  
Services

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identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



LL

FILE: [REDACTED]  
MSC 06 069 10895

Office: COLUMBUS

Date: MAY 23 2007

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:



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.

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

The district 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 reiterates his claim that he first entered the United States in 1979 with his parents when he was two years old and left this country with his parents when he was 11 years old.

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.

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 December 8, 2005. The applicant indicated on the Form I-687 that he first entered the United States in September 1979. At part #30 of the Form I-687 application where applicants are instructed to list all residences in the United States since initial entry, the applicant indicated that he lived at the [REDACTED] located at [REDACTED], New York, New York” from November 1979 to September 1985 and at the “[REDACTED] located at [REDACTED] New York, New York” from September 1985 to October 1988. At block #31, where applicants are instructed to list affiliations or associations to which they belonged during the qualifying period, the applicant indicated that he attended services at [REDACTED] and [REDACTED] [REDACTED] New York, New York, from December 1979 to October 1988. The applicant did not submit any evidence in support of his application.

In a separate proceeding, the applicant applied for asylum in the United States and withholding of removal on February 20, 2001. On the applicant's Form I-589, Application for Asylum and for Withholding of Removal, and at his asylum interview, the applicant indicated that he left his country, Mauritania, on November 17, 2000, and entered the United States on January 5, 2001. This statement directly contradicts the applicant's claim on the Form I-687 that he first entered the United States in September 1979. It is noted that the applicant told the interviewing officer during his legalization interview that he last entered the United States in October 2001 and filed for asylum at that time. This statement contradicts the applicant's claim on his asylum application that he last entered the United States on January 5, 2001. Furthermore, the applicant filed his asylum application on February 20, 2001, not after an entry in October 2001.

On January 11, 2006, the applicant was requested to submit additional evidence to establish continuous residence in the United States from prior to January 1, 1982 through the date he (or his parent) attempted to file his legalization application and continuous physical presence in the United States from November 6, 1986 to the date he (or his parent) attempted to file a legalization application. The applicant, in response, submitted a letter dated December 12, 1987, from [REDACTED], Manager of [REDACTED], New York, New York, stating that [REDACTED] [sic] and his son [REDACTED] resided at the [REDACTED] from September 1979 to September 1985. This statement contradicts the applicant's statement on the Form I-687 that he resided at that address until October 1985. This statement also directly contradicts the applicant's claim on his asylum application that he lived in Mauritania from August 1982 to December 2000. Furthermore, the applicant claims on appeal that he lived in New York with both of his parents. The manager of [REDACTED] makes no mention of the applicant's mother residing in his hotel. He states only that the applicant and his father resided together at the hotel.

Additionally, at part 28 of the asylum application, where applicants are instructed to list all residences in the United States since the date of their first entry, the applicant indicated that he lived in Mauritania from August 1982 to November 2000, that he lived in Dakar, Senegal, from November 2000 to January 2001, and that he had resided at [REDACTED] Columbus, Ohio," since January 2001. These statements contradict the applicant's claim on his Form I-687 that he resided in New York, New York from November 1979 to October 1988.

Moreover, the applicant indicated on his asylum application that he attended school in Mauritania from September 1982 through October 1994. On appeal from the denial of his Form I-687, the applicant provided a November 10, 2006, statement in which he claimed that his father "didn't expect how difficult it would be to live illegally with a little girl in America. My mother was very mad because I could not go to school." The applicant's statement on appeal that he was not able to attend school in the United States when he was a "little girl" living in New York, New York, directly contradicts his claim on his asylum application that he attended school in Mauritania from September 1982 through October 1984. In addition, the personal information contained in the applicant's appellate statement does not appear to relate to him. For example, the applicant repeatedly speaks of having been a "little girl" or a "young girl" while living in

New York, when in fact, the applicant is male. The applicant claimed in the appellate statement that he was two years old when he first came to the United States in September of 1979 and that he was 11 years old when he left the United States in October 1988; however, the applicant was born on May 7, 1975, and would have been four years old in September of 1979 and 13 years old in October of 1988.

These contradictions in the applicant's claimed dates of entry and residence in the United States undermine the credibility of his claim of continuous residence in this country from prior to January 1, 1982 through the date he or his parents purportedly attempted to file a Form I-687.

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).

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.

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.

On March 26, 2007, the Chief of the AAO sent a notice to the applicant informing the applicant of his intent to dismiss the appeal unless the applicant could provide evidence to overcome the contradictions and discrepancies noted above. The Chief of the AAO informed the applicant that, by filing the Form I-687, making false statements, and submitting the fraudulent evidence described above, it appears that he had sought to procure an immigration benefit through fraud and the willful misrepresentation of material facts. The director further informed the applicant that unless he could provide independent and objective evidence to overcome, fully and persuasively, the findings discussed above, the AAO would dismiss his appeal and enter a formal finding of fraud into the record. The applicant was granted 15 days to submit additional evidence to overcome the findings discussed above. However, as of the date of this decision the applicant has failed to submit a statement, brief, or evidence addressing the adverse information relating to the applicant's claim of residence in the United States since prior to January 1, 1982. 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.

The absence of sufficiently detailed supporting documentation and the existence of derogatory information that establishes the applicant used postmarked envelopes in a fraudulent manner and made material misrepresentations all 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 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-*, *supra*.

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 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.