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U.S. Citizenship  
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MSC-05-263-10196

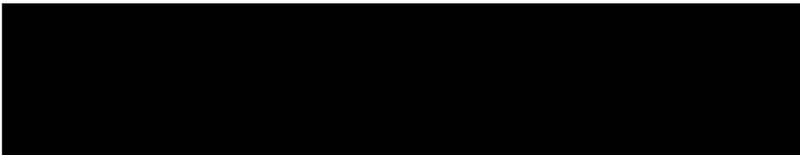
OFFICE: NEWARK

DATE: DEC 29 2008

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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom, Acting 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, Newark, New Jersey. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant submitted a Form I-687, Application for Status as a Temporary Resident Under Section 245A of the Immigration and Nationality Act (Act), and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, together comprising the I-687 Application. The director determined that the applicant had not established by a preponderance of the evidence that he had continuously resided in the United States in an unlawful status for the duration of the requisite period. The director denied the application, finding that the applicant had not met his burden of proof and was, therefore, not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, the applicant asserts that he was continuously present in the United States, except for brief, casual and innocent departures, from November 6, 1986 until the date he was turned away by the Immigration and Naturalization Service.

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 Act, 8 U.S.C. § 1255a(a)(2). The 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. § 1255a(a)(3). The regulations clarify that the applicant must have been physically present in the United States from November 6, 1986 until the date of filing the application. 8 C.F.R. § 245a.2(b)(1).

For purposes of establishing residence and physical presence under the CSS/Newman Settlement Agreements, the term "until the date of filing" in 8 C.F.R. § 245a.2(b)(1) means until the date the applicant attempted to file a completed Form I-687 application and fee or was caused not to timely file during the original legalization application period of May 5, 1987 to May 4, 1988. CSS Settlement Agreement, paragraph 11 at page 6; Newman Settlement Agreement, paragraph 11 at page 10.

The applicant has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite period, 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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.2(d)(6).

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 his continuous unlawful residence in the United States for the requisite period. Here, the submitted evidence is not relevant, probative, and credible.

On June 20, 2005, the applicant filed a Form I-687, Application for Temporary Resident Status Under Section 245A of the Immigration and Nationality Act. The applicant signed this application under penalty of perjury, certifying that the information contained in the application is true and correct. At Part #30 of the application, where applicants are asked to list all of the residences in the United States since first entry, the applicant indicated that he resided during the requisite period at: [REDACTED] Elmhurst, New York from December 1981 to October 1984; [REDACTED] West Hempstead, New York from December 1984 to February 1988; and [REDACTED] Corona, New York from February 1988 to April 1990. At Part #33, where applicants are asked to list their employment history in the United States, the applicant indicated that during the requisite period he was employed with [REDACTED], located in Long Island City, New York, from December 1981 to February 1988.

The applicant furnished the following documentation as corroborating evidence:

- An affidavit from \_\_\_\_\_ dated May 26, 2005, stating that she has known that the applicant has been residing in the United States from October 1981 to present;

An affidavit from \_\_\_\_\_ dated May 27, 2005, stating that he has known that the applicant has been residing in the United States from October 1981 to present;

- A notarized letter from \_\_\_\_\_ stating that the applicant was sharing an apartment with her in Queens, New York from December 1981 to October 1984; and
- A notarized letter from the \_\_\_\_\_ located in Long Island City, New York, stating that the applicant was employed with the company from December 1981 to February 1988.

During the adjudication of the applicant's appeal, information came to light that adversely affects the applicant's overall credibility as well as the credibility of his claim of residence in the United States during the requisite period. The applicant's claim of continuous residence in the United States for the entire requisite period is inconsistent with other documentation in the applicant's record. The applicant's record reveals the following:

- On July 21, 1993, the applicant filed a Form I-589, Application for Asylum, with the former Immigration and Naturalization Service. The applicant signed this application under penalty of perjury, declaring that the information he provided is true and correct to the best of his knowledge and belief. On June 19, 1997, the applicant signed this application before an immigration officer, swearing that the contents of the application are true to the best of his knowledge. At Part #12 of this application, where applicants are asked to list the date of their arrival in the United States, the applicant responded, January 1, 1990. At Part #24, where applicants are asked if they have traveled to the United States before, the applicant responded "No." The applicant's responses indicate that he first entered the United States on January 1, 1990.
- The applicant submitted with his asylum application, a Form G-325A, Biographic Information, which he signed on June 13, 1993. This form requests applicants to provide their residence(s) for the last five years and their last address outside the United States. The applicant responded that he resided in Hoshiarpur, Punjab, India from May 1980 to December 1989. The applicant's response indicates that he continuously resided in India during the entire requisite period.
- The applicant's asylum application was referred to an Immigration Judge and he was placed in removal proceedings. On December 28, 1998, the applicant had a hearing on his asylum application before an Immigration Judge. The transcript of this hearing shows that he testified under oath that the first time he traveled outside India was in December 1989. The applicant's response indicates that he continuously resided in India during the entire requisite period.

The inconsistencies between the applicant's asylum application, application for temporary resident status and court testimony lead to a finding that he has willfully misrepresented material facts in an attempt to establish his residence within the United States for the requisite period. By engaging in such an action, the applicant has seriously undermined his own credibility as well as the credibility of his claim of continuous residence in the United States during the requisite period. Because the applicant has made material misrepresentations, 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 application. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). 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. *Id.*

Section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), 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 October 29, 2008, informing them that it was the AAO's intent to dismiss the applicant's appeal based upon the fact that he had willfully misrepresented a material fact 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)(i) of the Act, and that, as a result of his actions, his appeal would be dismissed.

The applicant was granted fifteen days to provide substantial evidence to overcome, fully and persuasively, these findings. As of the date of this decision, the applicant has not responded to the AAO's notice of intent to dismiss his appeal. As discussed, it is incumbent on the applicant to resolve inconsistencies by independent objective evidence pursuant to *Matter of Ho, supra*. The applicant has failed to provide any such evidence and has not overcome the basis for a finding of fraud.

The finding that the applicant has willfully misrepresented material facts, in an attempt to establish his residence within the United States for the requisite period, clearly negates the credibility of his claim of residence in the United States for the requisite period, as well as the credibility of the documents he 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 by a preponderance of the evidence that he has resided in the United States for the requisite period, as required under both 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.

In addition, the AAO finds that the applicant has sought to procure a benefit provided under the Act through willful misrepresentation of a material fact, a ground of inadmissibility under Section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i). Because the applicant has failed to provide independent and objective evidence to overcome this finding, fully and persuasively, the AAO affirms its finding of fraud. A finding of fraud is entered into the record, and the matter will be referred to the U.S. Attorney for possible prosecution, as provided in 8 C.F.R. § 245a.2(t)(4).

**ORDER:**

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