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FILE: MSC 04 329 23034

Office: NEWARK

Date: FEB 01 2006

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: SELF-REPRESENTED

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 "D. King" or similar, written over a horizontal line.

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, Newark, and 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. 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 submitted additional evidence in the form of affidavits to support his claimed attempt to file a Form I-687 application.

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). 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).

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.

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).

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.

In the present matter, the issue is whether the applicant has furnished sufficient credible evidence to demonstrate that he resided in the United States during the statutory time period. The following evidence was submitted in support of the applicant's claim:

1. A letter dated December 27, 1989 from [REDACTED] who claimed that the applicant moved to his neighborhood in Brooklyn, New York in 1982. [REDACTED] stated that the applicant volunteered at the Hispanic United Front, Inc. since he moved to the neighborhood.
2. A mailing addressed to the applicant from the Immigration and Naturalization Service in London, Kentucky. The mailing does not contain a postage date. As such, this document has minimal probative value as evidence of the applicant's residence in the United States during the requisite time period.
3. An undated immigration form containing the applicant's name, a foreign address, and the address of OMI Corporation in New York. There is no explanation as to how this document pertains to the applicant's residence in the United States during the relevant time period.
4. The customer copy of a money order identifying the applicant as the purchaser and "The Consulated General of Bangladesh New York" as the payee. A hand-printed date of October 20, 1981 appears on the copy.

A number of documents that were not listed above were also submitted. However, as such documents do not pertain to the relevant statutory time period, they need not be addressed in this discussion. Additionally, in a letter dated September 19, 2007, the AAO notified the applicant of adverse findings with regard to the following documents:

1. A photocopy of a Dissolution of Trade Name Certificate indicating that [REDACTED] and [REDACTED], both of Elizabeth, New Jersey, were dissolving a business operating under the name [REDACTED] located at [REDACTED] Elizabeth, New Jersey." This statement was apparently subscribed and sworn to by the applicant and Mr. [REDACTED] on May 29, 1982. However, closer examination revealed that the "8" in the signature date of May 29, 1982 was originally a "9" and appears to have been hand altered in ink to read "1982." A stamp on the right-hand side of the form indicates that the document was "officially filed, May 29, 1982." However, as with the signature date, the original date appears to have been 1992 and the "9" appears to have been hand altered in ink to read "1982."
2. A photocopy of a Trade Name Certificate form indicating that the applicant and [REDACTED] were conducting a business under the name [REDACTED] located at [REDACTED], Elizabeth, New Jersey. The lower left portion of the form indicates that the certificate was "subscribed to and sworn to this 8<sup>th</sup> day of May 19982." The year in this portion of the form is preprinted "199\_." The AAO finds that this document that was not originally issued in 1982, but rather sometime after 1990. It appears that the original number entered on the blank space for the final digit of the year "199\_" was a "9", but that number has been eradicated or altered and the numbers "82" substituted in ink.
3. A photocopy of an earnings statement from McDonald's of Rahway, Rahway, New Jersey, purportedly for work performed by the applicant in the pay period ending on "91382." However, the year of this pay period was originally 1992; it appears that the "9" has been hand altered in ink to "8" so that the document appears to have originated in "1982" rather than "1992."
4. An original Travelers Express Money Order in the amount of \$244.00 payable to the Internal Revenue Service. The date of issuance on the upper right-hand corner of the money order is handwritten as "April 1, 19982." It appears that the actual date of issuance of this form was 1999, but the final digit in the year 1999 has been changed by hand in ink to an "8" and the number "2" added after the "8" in an apparent attempt to make the document appear to have been issued in 1982.
5. Two United States Postal Service pay statements for pay periods 20 and 21 in the year 1982. Again, it appears that the pay statements were actually dated in 1999 but the "9" has been hand altered in ink so that the date of the pay statements appears to be "1982."

The applicant was allowed additional time in which to respond to the AAO's adverse findings. To date however, four months since the findings were issued to the applicant, no evidence or information has been submitted to resolve the considerable deficiencies cited above. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Furthermore, 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; any 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) 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 fact that the applicant submitted documents that have been altered so that they appear to be dated during the requisite period to establish continuous residence in the United States establishes 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. 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 this country for the period from prior to January 1, 1982 to May 4, 1988. Because the applicant has submitted falsified documents, the AAO cannot accord any weight to the other evidence submitted in support of the applicant's 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-*, 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. Additionally, 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 prior finding of fraud.

**ORDER:** The appeal is dismissed. This decision constitutes a final notice of ineligibility.