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FILE: [Redacted]
MSC 06 069 10953

Office: NEW YORK

Date: **MAY 19 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: SELF-REPRESENTED

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.

**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, 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. Specifically, the director made note of a considerable discrepancy between the information provided by the applicant in the Legalization Front Desk Questionnaire and the Class Membership Worksheet. The director ultimately 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 the director failed to consider evidence submitted in support of his claim.

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 until the date of filing the application. 8 C.F.R. § 245a.2(b)(1).

Under the CSS/Newman Settlement Agreements, 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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he resided in the United States during the requisite time period. Here, the applicant has not met this burden.

The record shows that in addition to the Form I-687 adjudicated in the present matter, the applicant previously filed a Form I-485 under provisions of the Legal Immigration Family Equity (LIFE) Act, which was denied on August 17, 2005. The record contains the following documents in support of the applicant's claimed residence in the United States during the requisite time period:

1. Affidavits from [REDACTED] and [REDACTED], each dated October 10, 1989. All three affiants provided the applicant's residential addresses from December 1981 through the date of the affidavit as well as the event during which each affiant met the applicant. However, none of the affiants established a basis for his or her respective knowledge of the applicant's prior residential addresses. As such, these affidavits can be afforded minimal weight as evidence of the applicant's residence in the United States for the requisite period.
2. Affidavits from [REDACTED] and [REDACTED] both dated September 29, 1989. Both affiants stated that they knew the applicant from 1981 to 1986 and claimed that the applicant worked as a street vendor who sold various products. Neither affiant specified where the applicant purportedly operated his business, what he sold, or how they came about the information, as neither affiant actually claimed to have been patrons of the applicant's street vending business.
3. Two affidavits dated May 10, 1990 from [REDACTED] and [REDACTED]. Both affiants claimed that the applicant resided with each of them at their respective residences. Mr.

Cappy claimed that the applicant resided with him at [REDACTED] from August to December of 1981 while [REDACTED] claimed that the applicant resided with him/her at [REDACTED] from December 1986 through the date of the affidavit. Both affiants claimed that rent receipts were in their respective names and that the applicant contributed to rent and other household expenses. However, neither affiant provided any information about the events and circumstances of the applicant's life during his residence in the United States within the statutory time period. As such, these affidavits can be afforded minimal weight as evidence in support of the applicant's claim.

4. A letter dated September 29, 1989 from [REDACTED] stating that the applicant resided at [REDACTED] located at [REDACTED], New York, New York from December 1981 to December 1986. Mr. [REDACTED] identified himself as the manager, but provided no details regarding a possible lease, the applicant's rent, or any other information that would lend credibility to Mr. [REDACTED] knowledge of the applicant's purported five-year residence in a building managed by Mr. [REDACTED]. Additionally, [REDACTED] provided no evidence of his identity. As such, this letter can be afforded minimal weight as evidence of the applicant's residence in the United States for the requisite period.
5. A letter dated September 29, 1989 from [REDACTED] claiming that the applicant was a member of the Muslim community and has been associated with the Masjid Malcolm Shabazz since October 1981. [REDACTED] claimed that the applicant attended various prayer services at the Masjid Malcolm Shabazz.
6. An undated letter from [REDACTED] stating that the applicant introduced her to her husband and that she has known the applicant for many years. The record also contains a letter dated January 31, 2006 from the same individual, claiming that she has known the applicant "since December 1981 to present a street vendor at that time [sic]." However, [REDACTED] did not provide any details about the applicant's life in the United States nor did she expressly state who she claimed was the street vendor, she or the applicant. As such, her statement has no probative value as it does not specifically corroborate the applicant's claim.
7. Photocopies of a number of envelopes addressed to the applicant at his claimed residential addresses during various dates within the statutory period.
8. A notarized letter dated May 4, 2006 from [REDACTED] who stated that he has known the applicant since 1981 and that the applicant has always been a good family friend and who often assisted [REDACTED]'s elderly parents. This statement lacks probative value as it offers no information about any events or circumstances of the applicant's life during his purported residence in the United States within the statutory period.

At his interview with a Citizenship and Immigration Services officer on March 27, 2006, the applicant stated that he actually came to the United States on July 15, 1981. The officer's notes from the interview

indicate the applicant said another individual completed his application. However, neither No. 48 of the original Form I-687, nor the No. 44 of the most recent application were signed by a third party to indicate that someone other than the applicant prepared either of his applications.

The record also contains further discrepancies. Namely, the applicant provided inconsistent information in his Form I-687 applications. In the first application, dated April 25, 1990, the applicant stated that he resided at [REDACTED] from December 1981 to December 1986 and that from December 1986 forward he resided at [REDACTED]. However, in the more recent Form I-687, filed on December 8, 2005, the applicant indicated that his residence at 975 Fulton St. did not commence until March 1988. In fact, in the more recent Form I-687 the applicant did not provide a residential address for the January 1987 through the February 1988 time frame. This omission suggests that the applicant may not have resided in the United States during a significant portion of the statutory time period, thereby interrupting any prior period of continuous unlawful residence that may have accrued. Additionally, while the applicant claimed two absences in No. 35 of his initial Form I-687, he claimed only one absence in No. 32 of the more recent Form I-687. In fact, the duration of the absence is also inconsistent from one application to the other. In the first Form I-687, the applicant claimed that his 1986 absence lasted from August to September of that year. However, in the more recent Form I-687, the applicant indicated that his absence lasted from July to September of 1986, thus indicating that the absence may have lasted longer than the 45 days allowed by regulation. *See* 8 C.F.R. § 245a.1(c). It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). In the present matter, the applicant's own statements are inconsistent with no explanation or evidence on record to reconcile or resolve these discrepancies.

Lastly, upon review of the documentation on record, the AAO observed various anomalies that seriously compromise the credibility of the applicant's claim. The adverse findings pertain specifically to the envelopes postmarked October 31, 1982, December 28, 1983, and July 13, 1986, all three of which were discussed by the AAO in a letter sent February 28, 2008. Briefly, a review of the *2008 Scott Standard Postage Stamp Catalogue* Volume 5 (Scott Publishing Company 2007) revealed that all three envelopes bear stamps that were not issued until after the date of the respective postmarks, thereby establishing that the applicant utilized these documents in a fraudulent manner and made material misrepresentations in an attempt to establish his residence within the United States during the requisite period. Case law precedent has firmly established that 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. at 591-92.

The fact the envelopes postmarked October 31, 1982, December 28, 1983, and July 13, 1986 bear stamps that were not issued until well after the dates of these postmarks 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.

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.

As stated above, the AAO issued a notice to the applicant on February 28, 2008 informing him that it was the AAO's intent to dismiss the appeal based upon the fact that he utilized the postmarked envelopes cited above in a fraudulent manner and made material misrepresentations in an attempt to establish his residence within the United States for the requisite period. The applicant was granted fifteen days to provide substantial evidence to overcome, fully and persuasively, these findings. 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 his claim of residence in the United States since prior to January 1, 1982.

The absence of sufficiently detailed supporting documentation, the applicant's inconsistent statements, 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-*, 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. 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. This decision constitutes a final notice of ineligibility.