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U. S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

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U.S. Citizenship
and Immigration
Services

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FILE:



OFFICE: NEW YORK

DATE: AUG 31 2009

MSC-06-059-12847

IN RE:

Applicant:



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-REPRESENTED¹

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.

John F. Grissom
Acting Chief, Administrative Appeals Office

¹ The applicant was represented by R [REDACTED] Mr [REDACTED] was convicted in the United States District Court for the Southern District of New York for willfully causing the subscription of an immigration document containing a material false statement and presenting an immigration document containing a false statement. Based on this conviction, [REDACTED] was suspended on May 7, 2008 from the practice of law before the Department of Homeland Security and the Executive Office for Immigration Review pending final disposition of his case.

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 Director, New York. 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. 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, through former counsel, asserts that he did not receive the director's notice of intent to deny. The applicant states that as corroborating evidence he submitted two affidavits that can be easily verified. The applicant states that he cannot provide any primary evidence of his stay during the statutory period because he was illegal. In support of his application, the applicant furnished an additional affidavit attesting to his residence.

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.

The record reflects that on November 28, 2005, the applicant filed a Form I-687, Application for Status as a Temporary Resident Under Section 245A of the Act, pursuant to the terms of the CSS/Newman Settlement Agreements. The applicant signed his 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 were asked to list their residences in the United States since first entry, the applicant responded that he resided in Flushing, New York from February 1981 to April 1990. At part #33 of the application, where applicants were asked to list their employment in the United States since entry, the applicant responded that he was self-employed in construction from February 1981 to April 1990. The applicant furnished with his application witness affidavits from [REDACTED] and [REDACTED]. The affiants attest to the applicant's continuous residence in the United States during the requisite period.

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 of proceedings. The record reveals that on August 30, 1996 the applicant filed a Form I-589, Application for Asylum and for Withholding of Deportation. The applicant signed this application under oath before an asylum officer at the San Francisco Asylum Office on August 26, 1998. Part E of this application requests applicants to list their residence and employment for the last five years. In response, the applicant stated that he resided in Punjab, India from 1962 to January 1995 and he was self-employed in farming from 1979 to June 1996. These responses are inconsistent with the instant Form I-687, which shows that the applicant resided in Flushing, New York from February 1981 to April 1990 and was self-employed in construction from February 1981 to April 1990. These contradictions are material to the applicant's claim because they indicate that he was residing in India during the entire requisite period.

The inconsistencies between the applicant's asylum application and application for temporary resident status lead to a finding that the applicant 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.* The above derogatory information indicates that the applicant misrepresented the date that he first arrived in the United States and thus casts doubt on his eligibility for temporary resident status.

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 the applicant on June 15, 2009, informing him that it was the AAO's intent to dismiss his 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, 8 U.S.C. § 1182(a)(6)(C)(i), and that, as a result of his actions, his appeal would be dismissed.

The applicant was granted 30 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-*, 20 I&N Dec. 77 (Comm. 1989). 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.