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U.S. Citizenship
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Services

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41

FILE: [REDACTED] OFFICE: FRESNO DATE: MAR 16 2009
[REDACTED] consolidated herein]
MSC-05-298-10814

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.


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 Field Office Director, Fresno, California. 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 denied the application, finding that the applicant submitted a fraudulent application and provided fraudulent testimony under oath. The director determined the applicant to be ineligible for temporary resident status on this basis and inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i).

On appeal, former counsel asserts that the applicant has, through his testimony and supporting documents, been consistent in statements and has not filed a fraudulent application. Former counsel maintains that the applicant has resided continuously in the United States and was physically present for the statutory period. The entire record was reviewed and considered in rendering a decision on the appeal.

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).

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) 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 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. 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, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 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. *See* 8 C.F.R. § 245a.2(d)(6). The weight to be given any affidavit depends on the totality of the circumstances, and a number of factors must be considered. More weight will be given to an affidavit in which the affiant indicates personal knowledge of the applicant's whereabouts during the time period in question rather than a fill-in-the-blank affidavit that provides generic information. The regulations provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment or attestations by churches or other organizations. 8 C.F.R. §§ 245a.2(d)(3)(i) and (v).

Even if the director has some doubt as to the truth, if the applicant 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.

On July 25, 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 their residences in the United States since first entry, the applicant showed that he resided during the requisite period at: [REDACTED] Tulare, California from January 1981 to February 1988.

On appeal, former counsel asserts that the applicant furnished two affidavits from individuals who had met the applicant during the requisite period. However, this assertion is not supported by the record of proceedings. The record reveals that the applicant failed to submit any

documentary evidence of his residence in the United States during the requisite period. As stated, to meet his 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). Therefore, the AAO finds that the applicant failed to meet his burden of proof in these proceedings.

In denying the application, the director determined that the applicant submitted a fraudulent application and provided fraudulent testimony under oath. The director determined the applicant to be ineligible for temporary resident status on this basis and inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i).

Upon a *de novo* review of the record, the AAO agrees with the director's determination. The applicant's claim of continuous residence in the United States for the entire requisite period is inconsistent with documentation in his record. The applicant's record reveals the following:

- On October 28, 1991, the applicant filed a Form I-589, Request for Asylum in the United States, 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 January 8, 2004, the applicant signed this application before an immigration officer. The applicant showed on this application that he attended the Ram Garia College in India from 1987 to 1989. This response is inconsistent with the applicant's temporary residence application, which states that he resided in Tulare, California from January 1981 to February 1988. This contradiction is material to the applicant's claim in that it has a direct bearing on the applicant's residence in the United States during the requisite period.
- The applicant submitted with his asylum application, a Form G-325A, Biographic Information Form, which he signed on June 13, 1993. This form requests applicants to provide their last address outside the United States. The applicant responded that he resided in Ranipur, Punjab, India from July 1968 to March 1991. The applicant's response is again inconsistent with his temporary residence application. As stated, the applicant indicated on his temporary residence application that he resided in Tulare, California from January 1981 to February 1988. This contradiction also is material to the applicant's claim because it indicates that he was residing 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 August 31, 2004, the applicant filed with the Immigration Court a Form EOIR-42B, Application for Cancellation of Removal and Adjustment of Status. The applicant signed this application under oath before an Immigration Judge swearing that the contents of the application are true to the best of his knowledge. The applicant showed on this application that he first entered the United States on March 10, 1991. He stated that he has never departed from the United State since this original date of arrival. The applicant listed his residence from 1991 to 1994 as [REDACTED], Tulare, California. These responses are inconsistent with the applicant's temporary residence application. The

applicant showed on his temporary residence application that he first arrived in the United States in January 1981, and resided at [REDACTED] from January 1981 to February 1988. The contractions are material to the applicant's claim because they cast further doubt upon his continuous residence in the United States during the requisite period.

The inconsistencies between the applicant's application for temporary resident status, asylum application, and application for cancellation of removal 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, the AAO cannot accord any of his 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 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. Furthermore, the applicant has failed to submit 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 the director's 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.