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5 **UNITED STATES DISTRICT COURT**
6 **EASTERN DISTRICT OF CALIFORNIA**
7

8 **BALDEV SINGH MANN,**

9 **Plaintiff**

10 **v.**

11 **ERIC H. HOLDER, JR., et al.,**

12 **Defendants**
13

CASE NO. 1:12-CV-1926 AWI BAM

**ORDER ON CROSS-MOTIONS FOR
SUMMARY JUDGMENT**

(Doc. Nos. 30, 31)

14
15 This is an immigration dispute between Plaintiff Baldev Singh Mann (“Mann”) and
16 Defendants, who are all government officials. Mann seeks relief under 5 U.S.C. § 702 (the
17 Administrative Procedures Act (“APA”)) and the Declaratory Judgment Act (28 U.S.C. § 2201).
18 Mann challenges the denial of his I-485 application for adjustment of status on the basis of under 8
19 U.S.C. § 1182(a)(6)(C)(i). Both parties have moved for summary judgment. For the reasons that
20 follow, Mann’s motion will be denied, and Defendants’ motion will be granted.
21

22 **FACTUAL BACKGROUND**

23 Mann is a native and citizen of India. In September of 1990, Mann was paroled into the
24 United States upon his attempted entry through Los Angeles International Airport.

25 In 1991, Mann was ordered excluded *in absentia*. Subsequently, Mann moved to reopen
26 the exclusion order, filed an I-589 application for asylum, and applied for a withholding of
27 removal. Mann’s persecution claim was based on his imputed political opinion with Sikh
28 militants in India. However, Mann disclaimed any association or ties to Sikh militants fighting for

1 independence in the Indian State of Punjab. Mann's requested relief was denied, and the order of
2 exclusion became final in August 1998 when the Board of Immigration Appeals ("BIA") affirmed
3 the Immigration Judge's ("IJ") decision/denial.

4 Instead of departing the United States, Mann sought to adjust his status through his wife
5 and daughter, who are both citizens of the United States. In July 2012, Mann filed an I-485
6 application for adjustment of status based on an approved I-130 visa petition that had been filed by
7 Mann's daughter.

8 On November 19, 2012, the United States Citizenship and Immigration Services ("CIS")
9 denied Mann's I-485 application. See Administrative Record (Doc. No. 29) ("AR") at 2. CIS
10 denied the application because CIS could not determine Mann's true identity, and Mann made
11 willful material misrepresentations, which made him ineligible for an adjustment of status under 8
12 U.S.C. § 1182(a)(6)(C)(i). In particular, CIS found that: (1) Mann submitted two birth related
13 certificates, but one of the certificates does not indicate Mann's claimed legal name, see id. at 2;
14 (2) Mann used the name "Bhadar Singh" and gave a birth date of May 13, 1958, upon entry into
15 the United States in September 1990, see AR at 2, 94, 96; (3) Mann submitted a birth certificate
16 with a birth date of May 13, 1957 and the name "Baldev Singh," but has also stated under oath
17 that his true legal name is "Baldev Singh Mann," see AR at 2, 3, 78, 97; (3) Mann submitted a
18 birth certificate, but later submitted a certificate that stated a birth certificate was unavailable, see
19 AR at 3, 36, 78; (4) Mann's 1991 request for asylum indicated that he first entered the United
20 States near the San Ysidro California Port of Entry in October 1990 without inspection and by
21 foot, but evidence reveals that Mann entered the United States on September 3, 1990 by a flight
22 that landed at Los Angeles International Airport, see AR 3, 79, 94; (5) Mann stated under oath that
23 he had never provided immigration authorities with a different account of his first entry into the
24 United States, see AR 3, 98; (6) Mann submitted an affidavit that stated he first came to the United
25 States in 1985, but returned to India in 1987, see AR 3, 87-92, 98; and (7) when asked whether the
26 affidavit was true in light of previous testimony that he first entered the United States in October
27 1990, Mann stated that his attorney had filled out the affidavit and that he did not say that he first
28 entered in 1985, but later he indicated that the affidavit was correct, see AR 3, 87-92, 98.

1 As part of its I-485 decision, CIS noted Mann’s explanation for some of the above
2 contradictions or misrepresentations. With respect to using different names, Mann gave two
3 responses. One response was: “I started using my family name when I got here. I was advised to
4 use this name.” AR 2. The other response, which was provided by Mann’s attorney, was: “Mr.
5 Mann has consistently used ‘Baldev Singh Mann’ as his complete name and May 13, 1957, as his
6 date of birth.” AR 3. CIS did not agree with the latter response and referred to the previously
7 identified names used by Mann. See id. With respect to birth records, Mann gave two responses.
8 One response was: “Before it was registered in the district, now there is a new district.” Id. The
9 other response, which was provided by Mann’s attorney, was: “Mr. Mann tried to explain at the
10 October 4, 2012 interview, that he did not have a copy of the birth certificate which he had
11 previously submitted to the INS, and that he was not able to obtain a new birth certificate from
12 India because the village where he was born was transferred to a new district.” Id. CIS did not
13 find the explanations plausible, and noted it was unclear how a village gets transferred or why the
14 transfer process would delete records. See id.

15 Following CIS’s denial of Mann’s I-485 application, Mann filed this lawsuit on November
16 27, 2012.

17 On December 6, 2012, Mann was removed from the United States to India pursuant to the
18 1998 final order of exclusion.

19 20 **SUMMARY JUDGMENT FRAMEWORK**

21 Summary judgment is an appropriate mechanism for reviewing agency decisions under the
22 APA. City & County of San Francisco v. United States, 130 F.3d 873, 877 (9th Cir. 1997);
23 Occidental Engineering Co. v. Immigration & Naturalization Service, 753 F.2d 766, 769-70 (9th
24 Cir. 1985). However, courts do not utilize the standard analysis for determining whether a
25 genuine issue of material fact exists. See Occidental, 753 F.2d at 769-70; Academy of Our Lady
26 of Peace v. City of San Diego, 835 F.Supp.2d 895, 902 (S.D. Cal. 2011); California RSA No. 4 v.
27 Madera Cnty., 332 F.Supp.2d 1291, 1301 (E.D. Cal. 2003). In reviewing an agency action, the
28 relevant legal question for a court is “whether the agency could reasonably have found the facts as

1 it did.” San Francisco, 130 F.3d at 877; Occidental, 753 F.2d at 769. A court “is not required to
2 resolve any facts in a review of an administrative proceeding.” Occidental, 753 F.2d at 769;
3 California RSA, 332 F.Supp.2d at 1301. As such, “the function of the district court is to
4 determine whether or not as a matter of law the evidence in the administrative record permitted the
5 agency to make the decision it did.” San Francisco, 130 F.3d at 877; Occidental, 753 F.2d at 769;
6 California RSA, 332 F.Supp.2d at 1301.

7 8 **CROSS MOTIONS**

9 *Plaintiff’s Argument*

10 Mann argues that CIS’s determination of ineligibility was erroneous as a matter of law.
11 Misrepresentations under § 1182(a)(6)(C)(i) must be material. None of the misrepresentations
12 were material because they did not have a natural tendency to influence the decision of the CIS,
13 the BIA, or the IJ.

14 With respect to dates of birth, in every application submitted to CIS, as well as the birth
15 certificate that was submitted, a birth date of May 13, 1957 appears. Any other discrepancy as to
16 date of birth is simply a minor typographical error.

17 With respect to different names, in Mann’s June 1991 I-589 application for asylum, Mann
18 stated that his true name was Baldev Singh Mann, he had also used the name Bhadar Singh, and
19 he had used the name Bhadar Singh to travel to the United States. Mann states that he has
20 consistently used the name Baldev Singh Mann as his complete name.

21 With respect to the birth related documents, the birth certificate that listed Baldev Singh
22 was dated April 17, 1990. That Mann’s full name did not appear was not unusual because, prior to
23 1960, birth records in India were not prepared at the time of birth and were only prepared upon
24 request. Similarly, when Mann submitted the certificate of non-availability of birth record, he no
25 longer had a copy of the birth certificate that he had previously submitted. When he attempted to
26 obtain a new birth certificate, he was unable to do so because the village where he was born had
27 been transferred to a new district. From the new district, he was only able to obtain a certificate of
28 non-availability.

1 With respect to date and manner of entry, the record clearly shows that Mann arrived in the
2 United States on September 3, 1990 at Los Angeles. The San Ysidro October 1990 representation
3 was made as part of Mann's I-589 application. The representation was immaterial because it
4 would not have mattered to the IJ adjudicating the I-589 application whether Mann entered in
5 October 1990 or September 1990. If Mann had otherwise met his burden of proof, the IJ would
6 have granted asylum.

7 With respect to the prior entry, in June 2009, Mann declared that he first entered the United
8 States in 1985 and returned to India in 1987. In a later interview, Mann stated that he first entered
9 the United States in October 1990. It was obvious from the interview that Mann had difficulty
10 recalling dates pertaining to events that took place many years ago, and Mann informed the
11 interviewing officer that he had difficulty remembering things because he was hit in the head by
12 police in India. Further, although Mann's adjustment of status application stated that he entered
13 the United States in September 1990, he continued to state in the interview that he entered the
14 United States in October 1990. Regardless, any inconsistency would not have affected any of
15 Mann's applications. The asylum application was based on events that took place in July 1990. A
16 prior entry in 1985 and departure in 1987 would not matter. Further, the declaration was made as
17 part of a motion to reopen proceedings, the basis of which was ineffective assistance of counsel.
18 A previous reentry and departure in the 1980's would have no effect on a decision to reopen.

19 Because none of the alleged misrepresentations would have had a natural tendency to
20 affect proceedings, the misrepresentations were immaterial and could not be grounds for denying
21 the I-485 application. Summary judgment therefore should be granted.

22 Defendants' Argument

23 Defendants argue that CIS's findings are reasonably supported by the record. Mann made
24 multiple misrepresentations, and those misrepresentations went to the core issues of identity and
25 manner of entry. Mann gave different names and birth dates, and such information is fundamental
26 to determining an alien's identity. Without knowing who an applicant alien is, CIS cannot
27 determine the alien's eligibility for a status adjustment. Mann gave no satisfactory answers
28 regarding the different names that had been used.

1 Mann also gave inconsistent information regarding the place and manner of his entry.
2 Mann described several different manners and dates of entry. Immigration history is relevant to
3 the question of admissibility, and inconsistent information deprives CIS of a particular aspect of
4 an alien's life. Such information might help CIS confirm the alien's identity and eligibility for
5 adjustment. Although Mann attempted to give explanations for his various statements, he
6 provided no corroboration for any explanation.

7 Mann had the burden of proving eligibility for an adjustment of status, and he failed to do
8 so. Summary judgment therefore should be granted.

9 Legal Standards

10 a. APA -- § 706(2)

11 The APA permits lawsuits against an agency when an individual has suffered “a legal
12 wrong because of agency action” 5 U.S.C. § 702; Rattlesnake Coalition v. United States
13 EPA, 509 F.3d 1095, 1103 (9th Cir. 2007). The agency action at issue must be “final agency
14 action for which there is no other adequate remedy in court.” 5 U.S.C. § 704; Mamigonian v.
15 Biggs, 710 F.3d 936, 641 (9th Cir. 2013). Under § 706(2), a court will reverse an agency's action
16 if it is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law,” or if
17 its factual findings are “unsupported by substantial evidence.” 5 U.S.C. §§ 706(2)(A), (E);
18 Herrera v. United States Citizenship & Imm. Servs., 571 F.3d 881, 885 (9th Cir. 2009); Love
19 Korean Church v. Chertoff, 549 F.3d 749, 754 (9th Cir. 2008). The party challenging the agency
20 action bears the burden of showing that the action violates § 706(2). See Managed Pharm. Care v.
21 Sebelius, 716 F.3d 1235, 1244 (9th Cir. 2013); Lockheed Martin Corp. v. Administrative Review
22 Bd., 717 F.3d 1121, 1129 (10th Cir. 2013). The scope of review under § 706(2) is “narrow,” and
23 “a court is not to substitute its judgment for that of the agency.” Judulang v. Holder, 132 S. Ct.
24 476, 483 (2011). The court's review “is based on the administrative record[,] and the basis for the
25 agency's decision must come from the record.” National Ass'n of Home Builders v. Norton, 340
26 F.3d 835, 841 (9th Cir. 2003). Agency action is “valid if the agency considered the relevant
27 factors and articulated a rational connection between the facts found and the choices made.”
28 Conservation Cong. V. United States Forest Serv., 720 F.3d 1048, 1054 (9th Cir. 2013). The

1 standard for invalidity under § 706(2)(A) is met “only where the party challenging the agency’s
2 decision meets a heavy burden of showing that the agency has relied on factors which Congress
3 has not intended it to consider, entirely failed to consider an important aspect of the problem,
4 offered an explanation for its decision that runs counter to the evidence before the agency, or is so
5 implausible that it could not be ascribed to a difference in view or the product of agency
6 expertise.” Managed Pharm., 716 F.3d at 1244. There is a presumption that the agency’s action is
7 valid. Peck v. Thomas, 697 F.3d 767, 772 (9th Cir. 2012).

8 **b. 8 U.S.C. § 1182(a)(6)(C)(i)**

9 “Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or
10 has sought to procure or has procured) a visa, other documentation, or admission into the United
11 States or other benefit provided under this Act is inadmissible.” 8 U.S.C. § 1182(a)(6)(C)(i);
12 Corona-Mendez v. Holder, 593 F.3d 1143, 1145 (9th Cir. 2010). The test for materiality is
13 whether the misrepresentation has “a natural tendency to influence the decisions” of the relevant
14 federal immigration agency. Kungys v. United States, 485 U.S. 759, 772 (1988); Essa v. Holder,
15 544 Fed. Appx. 772, 773 (9th Cir. 2013); Parlak v. Holder, 578 F.3d 457, 464-65 (6th Cir. 2009);
16 Forbes v. INS, 48 F.3d 439, 442 (9th Cir. 1995). However, “finding that a misrepresentation is
17 material does not require concluding that it necessarily would have changed the relevant decision.”
18 Injeti v. United States Citizenship & Immigration Servs., 737 F.3d 311, 316 (4th Cir. 2013). A
19 willful misrepresentation may be demonstrated by showing that the statement was deliberate and
20 voluntarily made with knowledge of falsity. See Essa, 544 Fed. Appx. at 773; Parlak, 578 F.3d at
21 464; Forbes, 48 F.3d at 442. “[F]alse statements and other inconsistencies must be viewed in light
22 of all the evidence presented in the case.” Kaur v. Gonzales, 418 F.3d 1061, 1066 (9th Cir. 2005)

23 **Discussion**

24 As indicated above, CIS denied Plaintiff’s I-485 application based on conflicting
25 statements regarding his original date of entry, his place of entry, and his identity. Under the
26 narrow APA review, the Court cannot find that CIS acted in an arbitrary or capricious manner.

27 CIS concluded that it was unable to determine Plaintiff’s identity because of the different
28 birth dates and different names that Plaintiff himself gave, and the discrepancies with the birth

1 documents. Plaintiff has given two different birth years, 1957 and 1958. Three names have been
2 associated with Plaintiff. Plaintiff gave immigration officials the name “Bhadar Singh” when he
3 arrived in Los Angeles. In other interactions and applications, Plaintiff has stated that his name is
4 “Baldev Singh Mann.” In one birth certificate, the name appears as “Baldev Singh.” Each of the
5 three names is similar, but they are obviously not the same. The problem of identity was
6 compounded when Plaintiff submitted a second certificate that stated no birth certification was
7 available. The second certification calls into question the original birth certificate, and the original
8 birth certificate did not have the name “Mann” on it. This information legitimately brings the
9 issue of identity into question.

10 It is true that Plaintiff attempted to explain the discrepancies between the names.
11 However, CIS did not find Plaintiff’s explanations credible. Why Plaintiff chose to travel and
12 enter the United States under the name “Bhadar Singh” is not clear, nor is it clear why Plaintiff did
13 not tell the immigration officials at Los Angeles airport that his name was actually “Baldev Singh
14 Mann.” It also is not entirely clear why the conflicting birth certificate information was presented.
15 Although it appears to the Court that Plaintiff was attempting to explain that the bureaucratic
16 change concerning his village was the reason for the conflicting certificates, that explanation does
17 not necessarily explain the deletion of the previous birth certificate.

18 In terms of materiality, in an unpublished opinion, the Second Circuit has held that the
19 issue of identity is not *per se* material. See Rahman v. Mukasey, 272 Fed. Appx. 35, *38 (2d Cir.
20 2008). However, *Rahman* did not involve a case in which multiple names and conflicting birth
21 documents were given. When CIS cannot determine who is actually applying for an adjustment of
22 status due to conflicting representations and documentation provided by the applicant, it is unclear
23 how CIS can do an appropriate investigation and vetting of an applicant. Concerns of security and
24 legality of adjustment are clearly implicated if CIS cannot do an appropriate investigation. Under
25 such circumstances, which exist in this case, identity and representations thereof would have “a
26 natural tendency to influence the decisions” of CIS and, thus are material.

27 With respect to Plaintiff’s representations regarding place and manner of entry, Plaintiff
28 gave three different dates and circumstances for his first entry into the United States. As indicated

1 above, Plaintiff has stated that he came to the United States in 1985, but then left in 1987.
2 Plaintiff has also stated that he arrived in October 1990 by foot through San Ysidro. In actuality,
3 it appears that Plaintiff arrived in September 1990 by airplane in Los Angeles. These are quite
4 different, and cannot all be true.

5 In terms of materiality, it is not clear to the Court that these contradictory statements are in
6 and of themselves material. Defendant does not explain the significance between the October
7 1990 San Ysidro entry story and the September 1990 Los Angeles entry story. It appears that
8 Defendants have accepted that Plaintiff actually entered the United States in September 1990 in
9 Los Angeles. Without an explanation about the significance of the San Ysidro story, the Court
10 can only speculate as to materiality. Defendants do discuss the significance of the 1985 entry and
11 1987 exit story. Defendants state that if this information had been disclosed as part of Plaintiff's
12 I-589 asylum application, it could have influenced CIS's decision. That is, CIS may have rejected
13 Plaintiff's fears of persecution because he was willing to travel back to India. But, as Plaintiff
14 points out, Plaintiff's alleged persecution did not begin until July 1990. Conduct occurring in
15 1987 would not appear to be relevant to persecution claims that arose in 1990.

16 Nevertheless, even if the contradictory statements regarding place, manner, and date of
17 entry are not alone and *per se* material, they have a tendency to complicate the identity issue.
18 Contradictory statements are examined in light of the evidence as a whole. See Kaur, 418 F.3d at
19 1066. Plaintiff's provision of three different place and manner of entry stories only amplifies the
20 contradictory birth related certificates, three different names, and two different birth dates.

21 Under the APA, there is a presumption that an agency's decision is valid, and the burden
22 on Plaintiff to show invalidity is not light. See Managed Pharm., 716 F.3d at 1244; Peck, 697
23 F.3d at 772. In making its decision, CIS pointed to contradictory and inconsistent representations
24 by Plaintiff regarding his identity and place and manner of entry. The Court "is not to substitute
25 its judgment for that of the agency." Judulang, 132 S. Ct. at 483. Plaintiff has not met his burden
26 of showing that CIS "relied on factors which Congress has not intended it to consider, entirely
27 failed to consider an important aspect of the problem, offered an explanation for its decision that
28 runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to

1 a difference in view or the product of agency expertise.” Managed Pharm., 716 F.3d at 1244.
2 CIS’s decision to invoke § 1182(a)(6)(C)(i) to deny Plaintiff’s I-485 application was not arbitrary,
3 capricious, or an abuse of discretion. Because the “evidence in the administrative record permitted
4 the agency to make the decision it did,” summary judgment in favor of Defendants is appropriate.
5 San Francisco, 130 F.3d at 877; Occidental, 753 F.2d at 769; California RSA, 332 F.Supp.2d at
6 1301.

7
8 **ORDER**

9 Accordingly, IT IS HEREBY ORDERED that:

- 10 1. Plaintiff’s motion for summary judgment is DENIED;
11 2. Defendant’s motion for summary judgment is GRANTED; and
12 3. The Clerk shall enter judgment for Defendant and CLOSE this case.

13 IT IS SO ORDERED.

14 Dated: September 24, 2014

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16 _____
17 SENIOR DISTRICT JUDGE