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U.S. Citizenship  
and Immigration  
Services

21

[Redacted]

FILE: [Redacted] MSC-05-216-11286

Office: Chicago

Date: JUL 25 2007

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:

[Redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if the matter 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 "Robert P. Wiemann".

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, Chicago, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined that the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through the date that he attempted to file a Form I-687, Application for Status as a Temporary Resident, with the Immigration and Naturalization Service or the Service (now Citizenship and Immigration Services or CIS) in the original legalization application period between May 5, 1987 to May 4, 1988. Therefore, the district director concluded that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements and denied the application.

On appeal, the applicant asserts that he has provided evidence of his eligibility to adjust to temporary resident status pursuant to the terms of the Newman (LULAC) settlement agreement.

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).

An applicant for adjustment to temporary resident status must 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. See Paragraph 11, page 6 of the CSS Settlement Agreement and paragraph 11, page 10 of the Newman Settlement Agreement.

An alien applying for adjustment of status 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).

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 continuous residence in the United States from prior to January 1, 1982 through the date he attempted to file a Form I-687 application with the Service in the original legalization application period from May 5, 1987 to May 4, 1988. Here, the submitted evidence is not relevant, probative, and credible.

The applicant filed a Form I-687, Application for Status as a Temporary Resident, and a Form I-687 Supplement, CSS/Newman (LULAC) Class Membership Worksheet, with CIS on May 4, 2005. The applicant indicated on this form that he has resided in the United States since July 1981. 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 (Act), 8 U.S.C. § 1255a(a)(2). The applicant has submitted documentary evidence, both within and outside the requisite period, to establish his residence in the United States. However, this proceeding will focus on the documentary evidence the applicant submitted to establish his residence in the United States during the requisite period. The applicant submitted the following documentary evidence to support his claim of continuous unlawful residence in the United States since prior to January 1, 1982 through the date he attempted to file a Form I-687 application with the Service in the original legalization application period from May 5, 1987 to May 4, 1988:

- Form I-20, Certificate of Eligibility for Nonimmigrant Student Status, which provides that the applicant was admitted as an F-1 student for the duration of his status on September 4, 1985.
- Notarized statement from [REDACTED] which provides that he has known of the applicant's continuous residence in the United States since August 22, 1981.
- Letter from [REDACTED] which provides that he has known the applicant since 1975.
- Copies of postmarked envelopes mailed to the applicant from Pakistan.
- Letter from [REDACTED] which provides that the applicant was his tenant at [REDACTED] Harding, Chicago, IL, from August 1981 until November 1983.
- Letter from [REDACTED] and [REDACTED] which provides that the applicant resided with them at [REDACTED], Chicago, IL, from December 1983 to October 1986.
- The applicant's apartment lease for [REDACTED], Chicago, IL, beginning November 1, 1986 and ending December 31, 1987.
- Employment letter from Coast to Coast Travel, stating that the applicant was employed with this company from September 1981 until November 1983.
- Employment letter from [REDACTED] stating that the applicant was employed with the company from January 1984 until June 1987.
- College transcript for East-West University, Chicago, IL, indicating the applicant's date of entry as January 9, 1986 and completion date in Spring 1989.
- Five letters from academic officials at East-West University confirming the applicant's enrollment at the university from 1986 until 1989.
- A copy of an identification card from Uptown National Bank, dated December 2, 1985.

The applicant has provided credible and probative evidence of his residence in the United States subsequent to his September 4, 1985 entry as an F-1 nonimmigrant student. The copies of the applicant's Form I-20 with an entry date of September 4, 1985; apartment lease for [REDACTED] Kenmore, Chicago, IL; East-West University school transcript; letters from academic officials at East-West University; and Uptown National Bank card, are credible and probative evidence of the applicant's residence in the United States as of September 4, 1985 until the date of attempting filing of his Form I-687 application during the original legalization application period. However, the applicant has failed to establish that his residence in the United States during this time was unlawful. The regulation at 8 C.F.R. § 245a.2(c)(3) provides the definition of eligibility for temporary resident status as an alien who establishes that he or she entered the United States as a nonimmigrant prior to January 1, 1982, and whose unlawful status was known to the Government as of January 1, 1982, and who has thereafter resided continuously in the United States in an unlawful status, and who has been physically present in the United States from November 6, 1986, until the date of filing the application. The word "Government" means the United States Government. An alien who claims his unlawful status was known to the Government as of January 1, 1982, must establish that prior to January 1, 1982, documents existed in one or more government agencies so, when such documentation is taken as a whole, it

would warrant a finding that the alien's status in the United States was unlawful. *Matter of P-*, 19 I. & N. Dec. 823 (Comm. 1988).

Even if the applicant established his unlawful residence in the United States subsequent to his September 4, 1985 entry as a nonimmigrant student, he failed to establish by a preponderance of the evidence his continuous residence in the United States during the *entire* requisite period. The applicant has not submitted credible and probative evidence of his residence in the United States from prior to January 1, 1982 until September 4, 1985. Pursuant to 8 C.F.R. § 245a.2(d)(6), the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility.

The applicant submitted a statement from [REDACTED] stating that he has known the applicant since August 22, 1981. However, this statement fails to specify how the author first met the applicant and the extent of their contact during the requisite period. The applicant submitted a letter from [REDACTED] dated February 17, 1990, which states that he has known the applicant for fifteen years. Based on the date of the letter, this time period would calculate to the year 1975. However, the applicant indicated on his Form I-687 application that he has resided in the United States since July 1981. This letter also fails to provide detailed information on the applicant's continuous residence in the United States during the requisite period.

The applicant submitted a letter from [REDACTED] and a letter from [REDACTED] and [REDACTED] to corroborate his addresses in the United States during the time period of August 1981 until October 1986. The letter from [REDACTED] states that the applicant was his tenant from August 1981 until November 1983. The letter from [REDACTED] and [REDACTED] states that the applicant resided with them from December 1983 to October 1986. However, both letters fail to provide the author's contact information to verify this testimony.

The applicant submitted two letters from his purported former employers, Coast to Coast Travel and Pak Submarine. The regulations at 8 C.F.R. § 245a.2(d)(3)(i) provide that:

Letters from employers should be on employer letterhead stationery if the employer has such stationery, and must include: (A) Alien's address at the time of employment; (B) Exact period of employment; (C) Periods of layoff; (D) Duties with the company; (E) Whether or not the information was taken from official company records; and (F) Where records are located and whether the Service may have access to the records. If the records are unavailable, an affidavit form-letter stating that the alien's employment records are unavailable and why such records are unavailable may be accepted in lieu of (3)(i)(E) and (3)(i)(F) of this paragraph. This affidavit form-letter shall be signed, attested to by the employer under penalty of perjury, and shall state the employer's willingness to come forward and give testimony if requested.

The letters from Coast to Coast Travel and [REDACTED] do not meet the criteria delineated in the regulations. The letter from Coast to Coast Travel states that the applicant was employed from September 1981 until November 1983. The letter from [REDACTED] states that the applicant was employed January 1984 until June 1987. These letters fail to provide the applicant's address during the time period of his purported employment. Furthermore, the letters fail to explain whether the employment information provided was taken from official company records or the reason employment records are unavailable.

The applicant submitted photocopies of several envelopes that were purportedly mailed to him from Pakistan, bear Pakistani postage stamps, and contain postmarks. However, upon examination of these envelopes, it is apparent that the applicant altered several of them. The particular postmarked envelopes in question are respectively dated: September 8, 1981, February 8, 1982, June 1982 and December 1982. The applicant also submitted photocopies of two envelopes where the dates of the postmarks are illegible. The applicant indicated on these respective documents that he received the envelopes on December 1981 and July 1982. The purported receipt dates of these two envelopes are also of questionable reliability.

The *2006 Scott Standard Postage Stamp Catalogue* vol. 5, 1-32 ([REDACTED] eds., Scott 2005), reveals the following regarding the Pakistani postage stamps affixed to the postmarked envelopes:

- The envelope postmarked September 8, 1981 bears three postage stamps. The applicant indicated on the submitted photocopy of this envelope that he received the envelope in September 1981. One postage stamp contains a picture of [REDACTED] and is in the value of one Rupee. The two other stamps contain a picture of the [REDACTED] and are in the value of two Rupees each. The postage stamp of [REDACTED] and the [REDACTED] are located on page 19, volume 5, of the *2006 Scott Standard Postage Stamp Catalogue*, and are listed respectively as catalogue numbers [REDACTED] and [REDACTED]. The catalogue lists the date of issue for the Mohammad Ali Jinnah postage stamp as August 14, 1989 and the [REDACTED] postage stamp as September 16, 1989. These dates are materially inconsistent with the September 1981 date the applicant claimed to have received the envelope containing these postage stamps.
- The envelope postmarked February 8, 1982 bears fifteen postage stamps. The applicant indicated on the submitted photocopy of this envelope that he received the envelope in February 1982. Ten postage stamps contain a picture of Attock Fort and are in the value of twenty Paise each. One postage stamp contains a picture of [REDACTED] and is in the value of ten Paise. These postage stamps are located on page 15, volume 5, of the *2006 Scott Standard Postage Stamp Catalogue*, and are listed respectively as catalogue numbers 616 A289 and 614 A289. The catalogue lists the dates of issue for these stamps as 1984 through 1988. These dates are

materially inconsistent with the February 1982 date the applicant claimed to have received the envelope containing these postage stamps.

- The envelope postmarked June 1982 bears six postage stamps. The applicant indicated on the submitted photocopy of this envelope that he received the envelope in June 1982. One postage stamp contains a picture of [REDACTED] and is in the value of 50 Pasia. One postage stamp contains a picture of [REDACTED] and is in the value of 10 Pasia. Three postage stamps contain a picture of [REDACTED] and are in the value of 80 Pasia each. These postage stamps are located on page 15, volume 5, of the *2006 Scott Standard Postage Stamp Catalogue*, and are listed respectively as catalogue numbers 617 A289, 614 A289 and 620 A289. The catalogue lists the dates of issue for these stamps as 1984 through 1988. These dates are materially inconsistent with the June 1982 date the applicant claimed to have received the envelope containing these postage stamps.
- The envelope postmarked December 1982 bears eight postage stamps. The applicant indicated on the submitted photocopy of this envelope that he received the envelope in December 1982. Four of these postage stamps contain a picture of Ranikot Fort and are in the value of 80 Pasia each. Two of these postage stamps contain picture of Hyderabad Fort and are in the value of 50 Pasia each. These postage stamps are located on page 15, volume 5, of the *2006 Scott Standard Postage Stamp Catalogue*, and are listed respectively as catalogue numbers 620 A289 and 617 A289. The catalogue lists the dates of issue for these stamps as 1984 through 1988. These dates are materially inconsistent with the December 1982 date the applicant claimed to have received the envelope containing these postage stamps.
- The applicant submitted a photocopy of an envelope where the postmark date is illegible; however he indicated on this document that the receipt date of the envelope was in December 1981. This envelope bears seven postage stamps. Four of these postage stamps contain a picture of Attock Fort and are in the value of 20 Pasia each. These postage stamps are located on page 15, volume 5, of the *2006 Scott Standard Postage Stamp Catalogue*, and are listed as catalogue number 616 A289. The catalogue lists the dates of issues for this stamp as 1984 through 1988. These dates are materially inconsistent with the December 1981 date the applicant claimed to have received the envelope containing this postage stamp.
- The applicant submitted another photocopy of an envelope where the postmark date is illegible; however he indicated on this document that the receipt date of the envelope was in July 1982. This envelope bears eight postage stamps. One of these postage stamps contains a picture of Rohtas Fort and is in the value of 10 Pasia. Six of these postage stamps contain a picture of Ranikot Fort and are in the value of 80 Pasia each. These postage stamps are located on page 15, volume 5, of the *2006 Scott Standard Postage Stamp Catalogue*, and are listed respectively as catalogue

numbers 614 A289 and 620 A289. The catalogue lists the dates of issue for these stamps as 1984 through 1988. These dates are materially inconsistent with the July 1982 date the applicant claimed to have received the envelope containing this postage stamp.

The fact that the envelopes postmarked between September 1981 until December 1982 bear stamps first issued beginning in 1984 up through 1989 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 the United States during the requisite period. In addition, the applicant rendered himself inadmissible to the United States pursuant to section 212(a)(6)(C) of the Act by committing acts constituting fraud and willful misrepresentation.

The AAO issued a notice to the applicant on June 14, 2007 informing him that it was the AAO's intent to dismiss his 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 AAO further informed the applicant that he was inadmissible to the United States under section 212(a)(6)(C) of the Act as a result of his actions. The applicant was granted thirty 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. 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 absence of sufficiently detailed supporting documentation and the existence of derogatory information that establishes the applicant used postmarked envelopes in a fraudulent manner and made material misrepresentations seriously undermines the credibility of the applicant's claim of residence in the United States 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 by a preponderance of the evidence

that he has resided in the United States since prior to January 1, 1982 through the date he attempted to file a Form I-687 application with the Service, 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 the date he attempted to file a Form I-687 application with the Service, 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.

In addition, the fact 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 rendered him inadmissible to this country pursuant to section 212(a)(6)(C) of the Act. By filing the instant application and submitting falsified documents, the applicant has sought to procure a benefit provided under the Act through fraud and willful misrepresentation of a material fact. 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 finding of fraud. The applicant failed to establish that he is admissible to the United States as required by 8 C.F.R. § 245a.2(d)(5). Consequently, the applicant is ineligible to adjust to temporary residence under section 245A of the Act on this basis as well.

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