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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
MSC 06 091 11166

Office: NEW YORK

Date: **DEC 03 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.

IN BEHALF OF APPLICANT:

[REDACTED]

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 Director, New York, New York, 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. The 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 section 245A of the Immigration and Nationality Act (Act), and therefore, denied the application.

On appeal, counsel asserted that the applicant submitted sufficient evidence in support of his claim of residence in the United States since prior to January 1, 1982. Counsel contended that the applicant continuously resided in this country for the entire requisite period except for an absence of just over one month in 1988 when he visited his ill mother in Brazil.

An applicant for temporary residence 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) and 8 C.F.R. § 245a.2(b).

An alien applying 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 and 8 C.F.R. § 245a.2(b)(1).

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. 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 including affidavits 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 meet his burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The record shows that the applicant submitted a Form I-687 application and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on December 30, 2005.

In support of his claim of continuous residence in the United States from prior to January 1, 1982, the applicant submitted an employment affidavit, six affidavits, a postcard postmarked August 4, 1981, an original envelope that is not postmarked, and sixteen original envelopes postmarked March 18, 1982, September 18, 1982, April 19, 1983, April 30, 1983, July 12, 1984, September 23, 1984, July 30, 1985, July 21, 1986, May 20, 1987, August 11, 1987, September 9, 1987, April 27, 1988, June 9, 1988, September 10, 1988, March 5, 1989, and August 10, 1989, respectively.

The director determined that the applicant failed to submit sufficient evidence demonstrating his residence in the United States in an unlawful status from prior to January 1, 1982. Therefore, the

district director concluded that the applicant was ineligible to adjust to temporary residence and denied the Form I-687 application on July 25, 2008.

Counsel's remarks on appeal regarding the sufficiency of the applicant's evidence of residence are noted. However, 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 this country from prior to January 1, 1982. As noted above, the applicant included a postcard postmarked August 4, 1981, an original envelope that is not postmarked, and sixteen original envelopes postmarked March 18, 1982, September 18, 1982, April 19, 1983, April 30, 1983, July 12, 1984, September 23, 1984, July 30, 1985, July 21, 1986, May 20, 1987, August 11, 1987, September 9, 1987, April 27, 1988, June 9, 1988, September 10, 1988, March 5, 1989, and August 10, 1989, respectively. The postcards and envelopes all bear Brazilian postage stamps and were purportedly mailed to the applicant from Brazil at addresses where he claimed to have resided in the United States during the requisite period. A review of the *2006 Scott Standard Postage Stamp Catalogue Volume 1* (Scott Publishing Company 2005) reveals the following:

- The envelope postmarked March 18, 1982 bears a Brazilian postage stamp with a value of twenty-one cruzeiros that commemorates the fifteenth anniversary of the Ministry of Communications. The stamp contains stylized illustrations of an electronic counter, telephone, and satellite dish. The stamp is listed at page 952 of Volume 1 of the *2006 Scott Standard Postage Stamp Catalogue* as catalogue number 1797 A963. The catalogue lists this stamp's date of issue as May 15, 1982.
- The envelope postmarked April 19, 1983 bears a Brazilian stamp with a value of 57 cruzeiros that commemorates the World Food Program and contains the symbol of the Food and Agriculture Organization of the United Nations (FAO) in the lower left corner. The stamp contains a stylized illustration of two men in a sailboat superimposed over a background of fish. This stamp is listed at page 954 of Volume 1 of the *2006 Scott Standard Postage Stamp Catalogue* as catalogue number 1885 A1014. The catalogue lists this stamp's date of issue as October 14, 1983.
- The envelope postmarked July 21, 1986 bears a Brazilian postage stamp with a value of 0.50 cruzados. The stamp contains an illustration of the flowering plant *Urera mitis*. This stamp is listed at page 958 of Volume 1 of the *2006 Scott Standard Postage Stamp Catalogue* as catalogue number 2083 A1113. The catalogue lists this stamp's date of issue as September 23, 1986.

The envelope postmarked May 20, 1987 bears a Brazilian postage stamp with a value of 2 cruzados that commemorates the fortieth anniversary of the Federal Court of Appeal. The stamp contains a stylized illustration of a law book and the

scales of justice surrounded by a laurel wreath flanked with courthouses on both sides. This stamp is listed at page 959 of Volume 1 of the *2006 Scott Standard Postage Stamp Catalogue* as catalogue number 2104 A1126. The catalogue lists this stamp's date of issue as June 15, 1987.

The fact that envelopes postmarked March 18, 1982, April 19, 1983, July 21, 1986, and May 20, 1987 each bear a stamp that was not issued until after the date of these respective 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 since prior to January 1, 1982. This derogatory information establishes that the applicant made material misrepresentations in asserting his claim of residence in the United States for the period in question and thus casts doubt on his eligibility for adjustment to temporary residence pursuant to the terms of the CSS/Newman Settlement Agreements and section 245A of the Act. By engaging in such an action, the applicant has negated his own credibility, the credibility of his claim of continuous residence in this country for the requisite period, and the credibility of all documentation submitted in support of such claim.

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 visa petition. 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. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The AAO issued a notice to the applicant and counsel on November 4, 2008 informing the parties that it was the AAO's intent to dismiss the applicant's 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 and counsel were granted fifteen days to provide substantial evidence to overcome, fully and persuasively, these findings.

The record shows that as of the date of this decision, neither the applicant nor counsel has submitted a response to the AAO's notice. Therefore, the record must be considered complete.

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 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 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 and his own contradictory testimony, 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 time he attempted to file for temporary resident status as required under section 245A(a)(2) of the Act. 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 is, therefore, ineligible for temporary resident status under section 245A of the Act.

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