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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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[REDACTED]

FILE:

[REDACTED]

Office: NEW YORK

Date:

OCT 22 2008

MSC 05 133 10697

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. 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.

A handwritten signature in black ink, appearing to read "R. 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, New York, and 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 ultimately 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 submitted additional documentation for the AAO's review.

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 until the date of filing the application. 8 C.F.R. § 245a.2(b)(1).

Under the CSS/Newman Settlement Agreements, 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. 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).

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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he resided in the United States during the requisite time period. Here, the applicant has not met this burden.

The record contains the following documents in support of the applicant's claimed residence in the United States during the requisite time period:

1. Two original postmarked envelopes, one with no legible postmark date and another postmarked February 9, 1982. With regard to the envelope containing no legible postmark, this document lacks any probative value in establishing the applicant's residence in the United States during the statutory time period. The envelope postmarked February 9, 1982 contains no return address and bears two Ghanaian stamps, one of which depicts two boxers boxing against the background of the Ghanaian national flag. As discussed in the AAO's prior notice, the stamp described herein is listed at page 247 of Volume 3 of the *2006 Scott Standard Postage Stamp Catalogue*, which identifies this stamp's date of issue as October 10, 1988.
2. Two nearly identical affidavits from [REDACTED] and [REDACTED], dated July 19, 2005 and July 22, 2005, respectively. Each affiant claimed to have met the applicant in December 1981 when the applicant purportedly came to remove snow from each of their respective houses. Although both affiants provided the applicant's date of birth, his social security number, and his current residential address, neither affiant provided information about the events and/or circumstances of the applicant's U.S. residence during the statutory period. As such, these affidavits will be afforded only minimal evidentiary weight.
3. A letter dated July 11, 2005 from [REDACTED], a pastor at Saint Therese R.C. Church, claiming that the applicant "frequently" attends his church. It is noted that [REDACTED] made no indication that the applicant actually attended this church during the statutory period nor did he provide the applicant's residential address either currently or during the statutory

period. As the applicant has not established that this document is relevant for the purpose of establishing his residence in the United States within the statutory time period, it will be afforded no weight as evidence in support of the applicant's claim.

Upon review of the documentation on record, the AAO observed that at least one of the envelopes previously submitted by the applicant was used in a fraudulent manner and that the applicant made material misrepresentations in an attempt to establish his residence within the United States during the requisite period. Case law precedent has firmly established that 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 fact the envelope postmarked February 9, 1982 bears a stamp that was not issued until well after the date of its postmark 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 this country for the period from prior to January 1, 1982 to May 4, 1988. In addition, the applicant rendered himself inadmissible to the United States under any visa classification, immigrant or nonimmigrant, pursuant to section 212(a)(6)(C) of the Act by committing acts constituting fraud and willful misrepresentation.

In light of the new derogatory information, the AAO issued a notice to the applicant on July 15, 2008 informing him that it was the AAO's intent to dismiss the appeal based upon the fact that he utilized the postmarked envelope 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 was also notified that if he chose to contest the AAO's findings, he must offer substantial evidence from credible sources addressing, explaining, and rebutting the discrepancy described above.

In the present matter, the applicant has responded by submitting two additional affidavits, one which he wrote and another affidavit written by [REDACTED]. In his own affidavit, executed on July 28, 2008, the applicant stated that he played no role in obtaining the document and had no idea as to its lack of authenticity. The applicant explained that he contacted [REDACTED], his nephew, in Ghana and requested that any relevant documentation regarding the applicant's residence in the United States during statutory period be forwarded to the applicant in the United States. The applicant claims that he had no knowledge that the envelope that [REDACTED] forwarded was fraudulent.

In the other affidavit, executed on July 25, 2008, [REDACTED] also claimed that the applicant had no knowledge that the envelope in question was fraudulent and claimed that he was the one who prepared the false document without telling the applicant.

The AAO concludes, however, that the new documentation offered by the applicant is not sufficient to overcome the AAO's adverse findings. As previously stated, the applicant was notified that any documentation submitted to contest the intended finding of fraud must come from a credible source. Neither the applicant, who is suspected of having perpetrated the fraud, nor the applicant's nephew, who has proclaimed himself as the creator of the fraudulent document, can be deemed a credible source.

The absence of sufficiently detailed supporting documentation and the existence of derogatory information that establishes the applicant used a postmarked envelope in a fraudulent manner all seriously undermine 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 to May 4, 1988 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, 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 May 4, 1988 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. Additionally, because the applicant has failed to provide independent and objective evidence to overcome, fully and persuasively, our finding that he submitted a falsified document, we affirm our prior 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. This decision constitutes a final notice of ineligibility.