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

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[redacted]

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FILE: [redacted] Office: Los Angeles Date: JAN 31 2008
MSC 05 204 10866

IN RE: Applicant: [redacted]

PETITION: 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:

SELF-REPRESENTED

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.

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

The district 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 section 245A of the Immigration and Nationality Act (Act) and denied the application.

On appeal, the applicant reiterated his claim of continuous residence in the United States since September 1981. The applicant declared that he submitted all available evidence in support of this claim and he had contacted family in friends in Mexico in an attempt to locate further documentation.

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)(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. *See* 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 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 record shows that the applicant submitted a Form I-687, Application for Status as Temporary Resident under Section 245A of the Act, and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on April 22, 2005. At part #30 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the applicant listed [redacted] in North Hollywood, California **from 1981 to 1985, [redacted] in North** Hollywood, California from 1985 to 1994, and "[redacted]" **in North Hollywood,** California from 1994 to the date the Form I-687 application was submitted. The fact that the applicant failed to provide full street addresses for his two purported residences from 1981 to 1994 undermines his claim of continuous residence in this country for the requisite period.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant submitted an affidavit that is signed by [redacted] Mr. [redacted] stated that he had known the applicant since an unspecified date when they worked for the same company trimming trees. Although Mr. [redacted] provided a listing of the applicant's places of residence since 1981 that corresponded in part to the applicant's testimony at part #30 of the Form I-687 application, he failed to list the full street addresses for the applicant's purported residences. Further, the fact that Mr. [redacted] failed to specify either the date he first met the applicant or the name of the tree-trimming company where he and the applicant both worked diminished the probative value of his testimony.

The applicant included an affidavit signed by I[redacted] who noted that he first met the applicant while both were playing basketball at San Fernando Park in 1981. Mr. [redacted] provided a listing of the applicant's places of residence since 1981 that matched in part the applicant's testimony at part #30 of the Form I-687 application, but failed to include the full street addresses for the applicant's purported residences.

The applicant provided an affidavit that is signed by [redacted] indicated that he had known the applicant in Mexico and that he and the applicant subsequently arrived in the United States at about the same time. Mr. [redacted] asserted that the applicant had lived in North Hollywood, California since 1981 and that he and the applicant occasionally played basketball together. Although Mr. [redacted] attested to the general locale of the applicant's residence, he did not offer any specific verifiable testimony, such as the applicant's address(es) of residence in the United States during the requisite period, that would tend to substantiate the applicant's claim of residence in this country for that period in question.

The applicant submitted photocopies of two postmarked envelopes dated March 11, 1987 and March 18, 1987, respectively. Both envelopes were mailed by the applicant from the United States to the same individual at an address in Mexico. The applicant listed his return address as "[redacted]" in North Hollywood, California on both of the envelopes. However, the applicant testified that he lived at '[redacted]' in North Hollywood, California at part #30 of the Form I-687 application on the dates these envelopes were mailed rather than the return address listed by the applicant on these envelopes.

The applicant included photocopies of eight postmarked envelopes dated March 13, 1985, February 8, 1986, July 22, 1986, August 25, 1986, August 27, 1986, September 3, 1986, September 16, 1986, and September 24, 1986, respectively. The applicant also provided a photocopy of a postmarked envelope sent by registered mail and dated August 6, 1986. All nine envelopes were mailed by the applicant from the United States to the same individual at an address in Mexico. The applicant listed his return address as '[redacted]" in North Hollywood, California on all nine of the envelopes. However, the applicant testified that he lived at '[redacted]' in North Hollywood, California at part #30 of the Form I-687 application on the dates these envelopes were mailed without listing the specific number of his residence. The applicant failed to provide any explanation as to why he omitted the number of his address of residence on [redacted] on the Form I-687 application.

The applicant submitted a photocopy of a postmarked envelope dated December 5, 1986. The envelope was apparently mailed by the applicant from the United States to the same individual at an address in Mexico. However, the applicant failed to list his return address on the envelope.

The applicant included photocopies of two postmarked envelopes one of which is dated May 21, 1982 while the other is dated February 18, 19[illegible]4. The applicant claimed that the envelope bearing the partially illegible postmark had been mailed on February 18, 1984 by including the handwritten notation "1984" on the front of the envelope. Both envelopes were mailed by the applicant from the United States to the same individual at an address in Mexico. The applicant listed his return address as "[redacted] in North Hollywood, California on both of the envelopes. However, at part #30 of the Form I-687 application where applicants were asked to list all residences

in the United States since first entry, the applicant listed "[redacted] in North Hollywood, California as his address of residence from 1981 to 1985 rather than a Lankershim Boulevard address. Further, the applicant testified that he did not move to [redacted] until 1994 at part #30 of the Form I-687 application.

The applicant provided photocopies of a photograph of himself posing with a trophy as well as a team photograph that included he and the team posing with a trophy. The applicant contended that the individual picture was taken in 1982 and the team picture taken in 1983. However, the probative value of these photographs is limited by the fact that the locations depicted in these photographs and the actual dates such pictures were taken cannot be discerned with certainty.

The applicant submitted a photocopy of a Certificate of Matriculation that was issued by the Mexican Consul in Los Angeles, California in Los Angeles, California on December 10, 1986. However, this document is of limited probative value as it failed to reference the applicant's residence in the United States from prior to January 1, 1982 up to December 10, 1986.

The record shows that the applicant appeared for an interview at the CIS office in Los Angeles, California, on December 16, 2005. The notes of the interviewing officer reflect that the applicant testified that he first entered the United States in September 1982. The record contains a signed sworn statement written by the applicant in his own hand and in his native language of Spanish that states in pertinent part: "Yo entre en el ano del 1982." The English translation of the applicant's signed sworn statement is "I entered in the year of 1982." The applicant's admission that he entered the United States for the first time in September 1982 seriously impairs the credibility of his claim that he resided in this country prior to January 1, 1982, as well as the credibility of any and all documents submitted in support of that 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).

In the notice of denial issued on February 8, 2006, the district director questioned the veracity of the applicant's claimed residence in the United States since prior to January 1, 1982. Specifically, the district director noted that the applicant acknowledged that he entered this country for the first time in 1982 in both his testimony and a signed sworn statement provided at his interview on December 16, 2005. The district director determined that the applicant had failed to establish his continuous residence in this country since prior to January 1, 1982 as a result of his admission, and, therefore, denied the application.

On appeal, the applicant reiterated his claim of continuous residence in the United States since September 1981. However, the applicant failed to address the fact that he admitted that he entered this country in 1982 in both the testimony and sworn statement he had provided at his interview.

With the Form I-687 application, the applicant included photocopies of two postmarked envelopes one of which is dated May 21, 1982 while the other is dated February 18, 19[illegible]4. The applicant claimed that the envelope bearing the partially illegible postmark had been mailed on February 18, 1984 by including the handwritten notation "1984" on the front of the envelope. Both envelopes were mailed by the applicant from the United States to the same individual at an address in Mexico. A review of the *2006 Scott Standard Postage Stamp Catalogue* Volume 1 (Scott Publishing Company 2007) reveals the following regarding the United States postage stamp affixed to the postmarked envelopes:

> The envelopes bear the same United States stamp valued at thirty-five cents which commemorates United States Senator [redacted]. The stamp contains a portrait of the senator as well as the years of his birth and death, 1888-1962, in the lower left-hand corner. This stamp is listed at page 63 of Volume 1 of the *2007 Scott Standard Postage Stamp Catalogue* as catalogue number [redacted] with a date of issue of April 3, 1991.

The fact that an envelope postmarked May 21, 1982 and a separate envelope the applicant claimed was mailed on February 18, 1984, both bear a stamp that was not issued until well after such dates establishes that the applicant utilized this document in a fraudulent manner and made material misrepresentations in an attempt to establish his residence within the United States for the requisite period. 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. As stated above, 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. *See Matter of Ho,* 19 I&N Dec. at 591-92.

The AAO issued a notice to the applicant on September 5, 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. Although the notice stated that the stamp commemorating Senator [redacted] contained on the two envelopes had been a part of a series of stamps featuring great Americans issued between 1986 and 1994, it failed to note that the stamp had been issued April 3, 1991 and erroneously listed the catalogue number of this stamp as 2180 A1562 rather than [redacted]. Regardless, this omission and error must be considered to be harmless, as the fact remains that an envelope postmarked May 21, 1982 and a separate envelope the applicant claimed was mailed on February 18, 1984, both bear a stamp that was not issued until April 3, 1991. The applicant was granted fifteen days to provide independent and objective evidence to overcome, fully and persuasively, these findings.

In response, the applicant submits a statement in which he declares that envelope postmarked May 21, 1982 and the separate envelope he claimed was mailed on February 18, 1984 contain a return address that differed from the address of residence he listed for these dates on the Form I-687 application because his mail receptacle was not secure and mail had been lost and stolen at his residence. The applicant indicated that friends of his had allowed him to use their address of residence as his mailing address during this period. The applicant claimed that he simply bought

stamps, put the stamps on envelopes, and mailed the envelopes to his wife on the dates reflected in the postmarks without any intent to falsify documents. The applicant submits the original copies of all supporting documents submitted with his Form I-687 application including affidavits, postmarked envelopes, the Certificate of Matriculation, and photographs. While the applicant may very well have used a mailing address that differed from his address of residence, his statements cannot reconcile the fact that an envelope postmarked May 21, 1982 and a separate envelope the applicant claimed was mailed on February 18, 1984, both bear a stamp that was not issued until April 3, 1991. Consequently, the applicant's explanation cannot be considered as sufficient to overcome this derogatory evidence.

The record shows 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. 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 a falsified document, we affirm our finding of fraud.

The absence of sufficiently detailed supporting documentation, the applicant's own testimony at his interview and in the signed sworn statement that he did not enter the United States until 1982, and the existence of adverse information that establishes he used postmarked envelopes in a fraudulent manner and made material misrepresentations all seriously undermine the credibility of his 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)(3), 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)(3) 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.

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