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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]
MSC 05 260 12863

Office: BALTIMORE

Date:

NOV 19 2009

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.

Perry Rhew
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, Baltimore, Maryland, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be withdrawn.

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 United States Citizenship and Immigration Services or USCIS) 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 reiterated the applicant's claim of residence in this country for the required period and asserted that the applicant submitted sufficient evidence in support of such claim.

Subsequent to the filing of the appeal, counsel and the applicant both submit letters to the AAO on October 20, 2009 requesting that the applicant's Form I-687 application and corresponding appeal be withdrawn. Although this request to withdraw the appeal shall be honored, the following facts must be noted.

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.

The record shows that the applicant submitted a Form I-687 application and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to USCIS on June 17, 2005. In

support of his claim of continuous unlawful residence in the United States since prior to January 1, 1982, the applicant submitted documentation including photocopied envelopes postmarked February 7, 1986, November 17, 1986, and June 19, 1987, respectively. These envelopes all contain Mexican postage stamps and were represented as having been mailed from Mexico to the applicant at the address in this country that he claimed as his residence as of the date of these respective postmarks. A review of the *2009 Scott Standard Postage Stamp Catalogue* Volume 4 (Scott Publishing Company 2008) reveals the following:

- The envelope postmarked February 7, 1986 contains a Mexican postage stamp with a value of one thousand three hundred pesos. This stamp contains a stylized illustration of a strawberry, the Spanish word for strawberries “fresas,” and the notation “Mexico Exporta” encircling an eagle’s head in the right hand corner. This stamp is listed at page 920 of Volume 4 of the *2009 Scott Standard Postage Stamp Catalogue* as catalogue number 1591. The catalogue lists this stamp’s date of issue as 1990.
- The envelopes postmarked November 17, 1986, and June 19, 1987 both contain the same stamp each with a value of one thousand three hundred pesos. This stamp contains a stylized illustration of a strawberry, the Spanish word for strawberries “fresas,” and the notation “Mexico Exporta” encircling an eagle’s head in the right hand corner and lined burelage (a pattern of fine lines or dots printed on a stamp to discourage counterfeiting or re-use) with lines running lower left to upper right forming an arch towards the lower right corner. This stamp is listed at page 920 of Volume 4 of the *2009 Scott Standard Postage Stamp Catalogue* as catalogue number 1592. The catalogue lists this stamp’s date of issue as 1990.

The fact that photocopied envelopes postmarked February 7, 1986, November 17, 1986, and June 19, 1987 all bear stamps that were not issued until well after the date of these respective postmarks establishes that the applicant utilized these 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 engaging in such action, the applicant 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.

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. 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).

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. Consequently, the applicant is ineligible to adjust to temporary permanent residence under section 245A of the Act and the terms of the CSS/Newman Settlement Agreements on this basis.

ORDER: The appeal is dismissed based upon its withdrawal. This decision constitutes a final notice of eligibility.