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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: SAN FRANCISCO Date: MAR 1 2 2010

MSC 05 232 16046

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.

Elizabeth McCormack

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, San Francisco, California, 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 she had continuously resided in the United States in an unlawful status since before January 1, 1982 through the date that she 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 the United States for the requisite period and asserted that the applicant had submitted sufficient evidence to establish such claim. Counsel objected to the director's denial of the Form I-687 application stating that such denial was based on both errors in law and fact. Counsel included copies of previously submitted documentation and a new statement from the applicant in support of the appeal.

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 regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment must: provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's duties; declare whether the information was taken from company records; and, identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

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 her 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 USCIS on May 20, 2005.

A review of the record reveals had previously asserted a claim to membership in a requisite legalization class action lawsuit by filing a separate Form I-687 application on November 19, 1990 and Affidavit for Determination of Class Membership in League of United Latin American

Citizens v. INS. At parts #22 to #30 of this Form I-687 application and Affidavit for Determination of Class Membership in League of United Latin American Citizens v. INS, the applicant testified that she first entered the country with a B-2 visitor's visa in May 1980 and that she remained in this country beyond her period of authorized stay. Further, at part #33 of this Form I-687 application filed on November 19, 1990 where applicants were asked to list all residences in the United States, the applicant listed her addresses of residence as [redacted]' in Orlando, Florida from 1980 to 1986 and '[redacted] in Miami, Florida from 1986 to the date this Form I-687 application was filed on November 19, 1990. In addition, at part #36 of this Form I-687 application where applicants were asked to list all employment in the United States since entry, the applicant indicated that she was a self-employed baby sitter from 1980 to October 1990. The applicant signed both the Form I-687 application and Affidavit for Determination of Class Membership in League of United Latin American Citizens v. INS certifying under penalty of perjury that all information contained in both documents was true and correct. Neither the Form I-687 application nor the Affidavit for Determination of Class Membership in League of United Latin American Citizens v. INS filed on November 19, 1990 contains any indication that either document was prepared by an individual other than the applicant.

The record further shows that the applicant filed another separate Form I-687 application and corresponding Affidavit of Circumstances on April 22, 1992. On the Affidavit of Circumstances, the applicant testified she first entered the United States by crossing the Canadian border without inspection at Detroit, Michigan on February 5, 1981. At part #33 of the Form I-687 application filed on April 22, 1992 where applicant's were asked to list all residences in the United States since first entry, the applicant listed her addresses of residence as '[redacted]" in Casselberry, Florida from February 1981 to November 1986 and '[redacted]' in Winter Park, Florida from November 1986 to February 1992. Further, at part #36 of this Form I-687 application where applicants were asked to list all employment in the United States since entry, the applicant indicated that she was self-employed at a driving range and a self-employed housekeeper and English tutor from February 1981 to November 1986 and again self-employed at a driving range and a self-employed English tutor from November 1986 to February 1992. The applicant signed both the Form I-687 application and corresponding Affidavit of Circumstances certifying under penalty of perjury that all information contained in both documents was true and correct. Neither the Form I-687 application nor the Affidavit of Circumstances filed on April 22, 1992 contains any indication that either document was prepared by an individual other than the applicant. It must be noted that the applicant's subsequent testimony contained on the separate Form I-687 application filed on May 20, 2005 corresponds to the testimony she provided on the Form I-687 application and corresponding Affidavit of Circumstances filed on April 22, 1992.

In support of her claim of residence in the United States for the requisite period, the applicant submitted residential leases, affidavits of residence, an employment letter, affidavit relating to the applicant's absence from this country in 1987, letters relating to the applicant's attempt to apply for legalization with the Service in the original application period, rent receipts, receipts for garbage collection services, a letter and newspaper article relating to increased rates for

garbage collection services, retail receipts, utility receipts, a receipt for newspaper delivery services, a letter confirming the lease of an apartment, an airline ticket issued on September 15, 1987, a photocopied State of Florida Identification Card, and an original postmarked envelope.

The director determined that the applicant failed to submit sufficient evidence demonstrating her residence in the United States in an unlawful status for the requisite period. Therefore, the director concluded that the applicant was ineligible to adjust to temporary residence and denied the Form I-687 application on August 13, 2007.

On appeal, counsel correctly noted that the director had erred in determining that the applicant was required to establish that she was a nonimmigrant visa holder who was in an unlawful status as of January 1, 1982 and that such unlawful status was known to the government as of this date. The record contains two separate claims put forth by the applicant regarding the manner of her first entry into the United States. The first claim was put forth in a Form I-687 application and corresponding Affidavit for Determination of Class Membership in League of United Latin American Citizens v. INS that were filed by the applicant on November 19, 1990 in which she asserted that she first entered the country with a B-2 visitor's visa in May 1980 and that she remained in this country beyond her period of authorized stay. Although the applicant has subsequently disavowed this particular claim and all other information contained in the Form I-687 application filed on November 19, 1990, she would have been in an unlawful status prior to January 1, 1982 through the passage of time because her period of authorized stay would have expired well before such date if she had entered this country with a B-2 visitor's visa in May 1980. The second claim was put forth by the applicant on a Form I-687 application and corresponding Affidavit of Circumstances that were filed by the applicant on April 22, 1992, in which she contended she first entered the United States by crossing the Canadian border without inspection at Detroit, Michigan on February 5, 1981. Consequently, the applicant need not establish that she was a nonimmigrant visa holder who was in an unlawful status as of January 1, 1982 and that such unlawful status was known to the government as of this date in either of the two scenarios put forth in this paragraph. Rather, the applicant must establish that she had continuously resided in the United States in an unlawful status since before January 1, 1982 through the date that she attempted to file a Form I-687 application with the Service in the original legalization application period between May 5, 1987 to May 4, 1988.

Counsel asserted that numerous errors had been made by the Service and its successor USCIS in mailing notices to the proper parties throughout the course of these proceedings. While a review of the record reveals instances in which good faith clerical and administrative mistakes occurred in several instances in the mailing of notices by the Service and its successor USCIS, such mistakes constitute harmless error because either the applicant or her most current counsel of record received such notice. Therefore, the service of the notices issued in these proceedings must be considered complete under the regulations put forth at 8 C.F.R. §§ 292.4(a) and 292.5(a).

Counsel and the applicant both contended that she had relied upon an unscrupulous attorney, [redacted], who provided false and inaccurate information on the Form I-687 application, corresponding Affidavit for Determination of Class Membership in League of United Latin American Citizens v. INS, and supporting affidavits that were filed by the applicant on November 19, 1990. Counsel and the applicant claimed that she never reviewed the content of these documents to determine the accuracy and truth of the information therein. The applicant and counsel declared that any discrepancies in evidence and testimony regarding the applicant's claim of residence in this country for the requisite period were attributable to the deceased [redacted] rather than the applicant.

Counsel's remarks on appeal relating to the sufficiency and quality of the evidence submitted by the applicant in support of her claim of continuous 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 for the requisite period. As has been previously discussed, the applicant submitted supporting documentation including an original envelope postmarked September 5, 1986. This envelope contains Tanzanian postage stamps and was represented as having been mailed from Tanzania to the applicant at the address in this country she claimed to have resided as of the date of this postmark at part #33 of the Form I-687 application filed on November 19, 1990.[1] A review of the *2009 Scott Standard Postage Stamp Catalogue* Volume 6 (Scott Publishing Company 2008) reveals the following:

- The original envelope postmarked September 5, 1986 contains four of the same Tanzanian stamp each with a value of two shillings that commemorates Insects of Tanzania. This stamp contains a stylized illustration of the Greater grain borer, Dumuzi. This stamp is listed at page 421 of Volume 6 of the *2009 Scott Standard Postage Stamp Catalogue* as catalogue number 365 A62. The catalogue lists this stamp's date of issue as April 22, 1987

The fact that an original envelope postmarked September 5, 1986 bears stamps that were not issued until after the date of this postmark establishes that the applicant utilized this document in a fraudulent manner and made material misrepresentations in an attempt to establish her residence within the United States for the requisite period. This derogatory information establishes that the applicant made material misrepresentations in asserting her claim of residence in the United States for the period in question and thus casts doubt on her 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 her 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.

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[1] Although the applicant subsequently claimed to have never lived at this address, her State of Florida Identification Card issued on September 19, 1990 lists this same address as her residence.

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 December 8, 2009 informing the parties that it was the AAO's intent to dismiss the applicant's appeal based upon the fact that she 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 parties were granted fifteen days to provide substantial evidence to overcome, fully and persuasively, these findings.

In response, counsel claims that the Service officer who reviewed the Form I-687 application and Affidavit of Circumstances filed on April 22, 1992, verified information contained in an employment letter from Casselberry Golf Course that had been submitted in support of the applicant's claim of residence for the period in question. Counsel submits a copy of the Service officer's notes from April 22, 1992. Nevertheless, the Service officer's notes cannot be considered as sufficient evidence to overcome the inconsistencies contained in the record.

Counsel and the applicant repeat the contention that she had relied upon an unscrupulous attorney, [redacted], who provided false and inaccurate information on the Form I-687 application, Affidavit for Determination of Class Membership in League of United Latin American Citizens v. INS, and supporting affidavits that were filed by the applicant on November 19, 1990. Counsel and the applicant reiterate that she never reviewed the content of these documents to determine the accuracy and truth of the information therein. Counsel and the applicant note that [redacted] made errors in listing critical information such as the manner of her first entry into the United States and her addresses of residence on the Form I-687 application, corresponding Affidavit for Determination of Class Membership in League of United Latin American Citizens v. INS. The applicant and counsel declare that any discrepancies in evidence and testimony regarding the applicant's claim of residence in this country for the requisite period were attributable to the now deceased [redacted] rather than the applicant.

While the record contains a Form G-28, Notice of Entry of Appearance as Attorney or Representative, dated November 10, 1990 reflecting [redacted] legal representation of the applicant, neither the Form I-687 application nor the Affidavit for Determination of Class Membership in League of United Latin American Citizens v. INS filed on November 19, 1990 contains any indication that either document was prepared by an individual other than the applicant. Furthermore, the applicant signed both the Form I-687 application and Affidavit for Determination of Class Membership in League of United Latin American Citizens v. INS filed on November 19, 1990 certifying under penalty of perjury that all information contained in both

documents was true and correct. Both the Form G-28 notice of entry dated November 10, 1990 and the Form I-687 application filed on November 19, 1990 list the applicant's current address of record as [redacted] in Miami, Florida. Not only does the original envelope postmarked September 5, 1986 attribute this same address to the applicant, the record also contains a photocopied residential lease dated September 1, 1986 and a photocopied State of Florida Identification Card with a photograph of the applicant that was issued on September 19, 1990, both of which are signed by the applicant and list her address as [redacted] in Miami, Florida.

Counsel argues that [redacted] lack of competence and scruples is evidenced by the fact that he filed the Form I-687 application based on his mistake that the applicant was eligible for relief under the legalization lawsuit, League of United Latin American Citizens v. INS rather than relief under the CSS/Newman Settlement Agreements. However, counsel's argument is without merit as a review of the judicial history of the lawsuit, League of United Latin American Citizens v. INS, and the regulation at 8 C.F.R. § 245a.10 reveals that this was one of the legalization class action lawsuits that was specifically incorporated into the CSS/Newman Settlement Agreements. *See* paragraph 1, page 3 of the CSS Settlement Agreement and paragraph 1, pages 3 and 4 of the Newman Settlement Agreement.

Neither the applicant nor counsel has put forth a reasonable and logical explanation as to why [redacted] would provide false testimony and create government issued and contemporaneous evidence such as the State of Florida Identification Card issued on September 19, 1990 and the residential lease signed by the applicant and dated September 1, 1986 in an attempt to establish her continuous residence in the United States for the period in question. As per industry custom and usage, [redacted] would have received a fee for services rendered in preparing the applicant's Form I-687 application and supporting documents filed on November 19, 1990, regardless of whether the Form I-687 application was subsequently denied or approved. No benefit could accrue to [redacted] through the provision of false information and creation of fraudulent evidence in these proceedings, rather such actions would have seriously jeopardized his ability to practice law and subjected him to professional sanctions and criminal prosecution. Neither the applicant nor counsel provides any independent evidence to establish that Theodore Fisher ever committed any crimes, misdeeds, or malpractice in his practice of law. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998)(citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter Of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The existence of derogatory information that establishes the applicant used the postmarked envelope cited above 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 her burden of proof in establishing that she 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, 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 a falsified document, we affirm our finding of fraud. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act.

A finding of fraud is entered into the record, and the matter will be referred to the United States Attorney for possible prosecution as provided in 8 C.F.R. § 245a.2(t)(4).

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