

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

**PUBLIC COPY**

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

L1

[REDACTED]

FILE:

[REDACTED]

Office: NEW YORK

Date: **OCT 04 2010**

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.

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, 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 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 submitted sufficient evidence to establish such claim.

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 USCIS on November 8, 2005.

In support of his claim of residence in the United States for the requisite period, the applicant submitted affidavits of residence, an employment letter, declarations of residence, a letter of membership, tax documents, photocopied pages from his Gambian passport, a Form I-94, Departure Record, an original retail receipt, medical documents, an original airline ticket, and original postmarked envelopes.

The director determined that the applicant failed to submit sufficient evidence demonstrating his 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 May 18, 2009.

The remarks of counsel on appeal relating to the sufficiency and quality of the evidence the applicant submitted in support of his 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 an indeterminate day in January 1981 (the first of the two numbers clearly reads "2" but the second number is indiscernible). Although the applicant provided additional original envelopes, these additional envelopes are postmarked after the expiration of the requisite period on May 4, 1988. The original envelope postmarked on an indeterminate day in January 1981 bears a Malian postage stamp and was represented as having been mailed from Mali to the applicant at the sole address in this country he claimed to have resided during the requisite period. A review of the *2010 Scott Standard Postage Stamp Catalogue Volume 4* (Scott Publishing Company 2009) reveals the following:

- The envelope bears a stamp with a value of one hundred twenty francs that commemorates the [REDACTED], [REDACTED] (1862-1943), and the 150<sup>th</sup> anniversary of the [REDACTED]. The stamp contains a portrait of [REDACTED] on the left and a stylized illustration of the building housing the Marchoux Institute. The stamp is listed at page 809 of Volume 4 of the *2010 Scott Standard Postage Stamp Catalogue* as catalogue number [REDACTED]. The catalogue lists this stamp's date of issue as February 18, 1985.

The fact that an original envelope postmarked an indeterminate day in January 1981 bears a stamp that was not issued until well 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 your residence within the United States for the requisite period. 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.

In addition, a review of the record reveals that the applicant previously filed a Form I-589, Request for Asylum in the United States, with the Service on May 27, 1991. At question #11 of this Form I-589 asylum application, the applicant stated that his address prior to coming to the United States had been [REDACTED]. At question #2 of this Form I-589 asylum application, the applicant testified that he arrived in the United States at New York, New York on March 2, 1988. Further, at question #28 of this Form I-589 asylum application, the applicant testified that he departed [REDACTED] on March 2, 1988. With this particular Form I-589 asylum application, the applicant included a Form G-325A, Report of Biographic Information. On the Form G-325A biographic report, the applicant testified that he resided in [REDACTED] from his birth in July 1964 to March 1988. The record shows the applicant signed both the Form I-589 asylum application and Form G-325A biographic report thereby certifying under the penalty of perjury that the information contained in such documents was true and correct.

The record also contains another Form I-589 asylum application that had been submitted to the Service on or about June 24, 1996. At part E of this Form I-589 asylum application, the applicant testified that he resided in [REDACTED] from his birth in July 1964 to March 1988 and that he was employed by the [REDACTED] as a farmer from July 1970 to September 1986. The record shows that the applicant signed this Form I-589 asylum application thereby certifying under the penalty of perjury that the information contained in the application was true and correct.

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 September 2, 2010 informing the parties that it was the AAO's intent to dismiss the applicant's appeal based upon the fact that he provided testimony in his Form I-589 asylum applications and corresponding Form G-325A biographic reports that contradicted his claim of residence, 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 evidence to overcome, fully and persuasively, these findings.

In response, the applicant submits a statement in which he claims that his submission of the postmarked envelope in question had been an honest mistake as he believed that he had received the envelope from his brother in 1982. The applicant contends that errors on the two Form I-589 asylum applications and corresponding Form G-325A biographic reports were not made by as he did not read and write English at the time the documents were executed, but instead were honest mistakes made by the preparer of the documents. However, the applicant's statements cannot be considered as sufficient to explain how an envelope postmarked on an indeterminate day in January 1981 bears a stamp that was not issued until February 18, 1985. Further, the two Form I-589 asylum applications and corresponding Form G-325A biographic reports contain no indication that they were prepared by any individual other than the applicant himself.

The existence of derogatory information that establishes the applicant provided testimony in his Form I-589 asylum applications and corresponding Form G-325A biographic reports that contradicted his claim of residence, utilized 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 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, 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.