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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: SEATTLE Date: MAR 1 0 2010

MSC 06 076 10430

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, Seattle, Washington, 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. This determination was based upon the applicant's submission of fraudulent envelopes in support of his claim of residence in this country for the requisite period as well as the applicant's testimony he resided in Rhepa, India from his birth on August 26, 1966 to December 1994 in both a Form I-589, Application for Asylum and for Withholding of Deportation, and a subsequent interview on July 2, 1996. 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 had submitted sufficient evidence in support of such claim. Counsel requested a copy of the record of proceeding. Counsel provided copies of previously submitted documentation as well as new documents in support of the appeal.

The record shows that subsequent to the appeal, counsel submitted a Freedom of Information Act request for a copy of the record. The record further shows that USCIS complied with counsel's request with Control Number NRC2007022562 and mailed a copy of the record to counsel on November 18, 2008.

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.

The first issue to be examined 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 December 15, 2005.

In support of his claim of residence in the United States for the requisite period, the applicant submitted affidavits of residence, letters of membership, photocopied photographs, and photocopied 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. The director further determined that the applicant had negated his claim of residence in this country for the period in question because he submitted fraudulent envelopes and had testified that he resided in Rhepa, India from his birth on August 26, 1966 to December 1994 in a Form I-589 asylum application for Asylum and for Withholding of Deportation, and a subsequent interview on July 2, 1996. Therefore, the director concluded that the applicant was ineligible to adjust to temporary residence and denied the Form I-687 application on January 10, 2007.

Counsel's remarks on appeal regarding the sufficiency of the evidence submitted by the applicant in support of his claim of 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 photocopied envelopes that are postmarked on the eleventh day of an indeterminate month in 1981 and March 12, 1983. These two envelopes bear Indian postage stamps and were purportedly mailed from India to the applicant at an address in this country. A review of the *2009 Scott Standard Postage Stamp Catalogue* Volume 3 (Scott Publishing Company 2008) reveals the following:

- The envelope postmarked on the eleventh day of an indeterminate month in 1981 bears two of the same stamp each with a value of three rupees. The stamp contains a stylized illustration of a two Smooth Indian Otters. This stamp is listed at page 904 of Volume 3 of the *2009 Scott Standard Postage Stamp Catalogue* as catalogue number 1824 A1238. The catalogue lists this stamp's date of issue as July 20, 2000.

- The envelope postmarked March 12, 1983 bear a stamp with a value of five rupees that contains a stylized illustration of a Leopard Cat. This stamp is listed at page 904 of Volume 3 of the *2009 Scott Standard Postage Stamp Catalogue* as catalogue number 1825 A1239. The catalogue lists this stamp's date of issue as April 30, 2000. The envelope also bears four of the same stamp each with a value of fifty paisas. This stamp contains a stylized illustration of a Nilgiri tahr, a species of mountain goat, and is listed at page 904 of Volume 3 of the *2009 Scott Standard Postage Stamp Catalogue* as catalogue number 1821 A1237. The catalogue lists this stamp's date of issue as July 20, 2000.

The fact that photocopied envelopes that are postmarked on the eleventh day of an indeterminate month in 1981 and March 12, 1983 both bear stamps that were not issued until well after the date of these postmarks 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. More importantly, the applicant admitted that these postmarked envelopes were not genuine in a statement submitted subsequent to the appeal. 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 submitted a Form I-589, Request for Asylum in the United States, to the Service on May 20, 1996. In response to question #3 at part C of the Form I-589 asylum application, the applicant testified that he was born on August 26, 1966 in Repha, India and that he completed the ninth grade at the Government High School in Jagatpur, India in 1982. The applicant stated that thereafter he focused on managing and operating his family's farming business and that he owned fifteen acres of land. At part #E of the Form I-589 asylum application the applicant testified that he lived in Rehpa, India from 1966 to December 1994, attended Government High School in Jagatpur, India from 1972 to 1982, and was a self-employed farmer from 1982 to December 1994. The record shows the applicant signed the Form I-589 asylum application thereby certifying under the penalty of perjury that the information contained in such application was true and correct. The record further shows that the applicant was interviewed regarding his Form I-589 asylum application on July 2, 1996. The notes of the interviewing officer reflect that the applicant reiterated that he lived in Rehpa, India until December 1994 and that after completing the ninth grade in 1982 he focused on managing and operating his family's farming business.

The fact that the applicant provided testimony in the Form I-589 asylum application and his subsequent interview on July 2, 1996 that directly contradicted his claim of residence in the United States for the requisite period only serves to further lessen his overall credibility and the credibility of such claim of 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 September 28, 2009 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 application asylum application and subsequent interview that contradicted his claim of residence and 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. The parties were granted fifteen days to provide substantial evidence to overcome, fully and persuasively, these findings.

In response, the applicant requested an extension in time to respond to the AAO's notice. However, as of the date of this decision, neither the applicant nor counsel has submitted a response addressing the derogatory information cited in the AAO' notice. Therefore, the record must be considered complete.

The existence of derogatory information that establishes the applicant used the postmarked envelopes 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 falsified documents, 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).

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center [or other office] does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd.* 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a de novo basis).

Beyond the director's decision, the next issue to be examined in this proceeding is whether the applicant is inadmissible under section 212(a)(9)(C)(i)(II) of the Act.

The statute at section 212(a)(9)(C)(i)(II) of the Act states that an alien who has been ordered removed under section 235(b)(1), section 240, or any other provision of law, and who enters or attempts to reenter the United States without being admitted is inadmissible.

A review of the record reveals that that the applicant previously submitted a Form I-589, Application for Asylum and for Withholding of Deportation, to the Service on May 20, 1996. The applicant's Form I-589 application was subsequently denied by the Director, San Francisco, California on July 16, 1996 and the applicant was placed into removal proceedings before the Immigration Judge. The record shows that the applicant appeared before the Immigration Judge on December 3, 1997 and withdrew his Form I-589 asylum application. The Immigration Judge granted the applicant voluntary departure until March 3, 1998 with an alternate order of deportation thereafter. The record contains no evidence to demonstrate that the applicant complied with the Immigration Judge's grant of voluntary departure from the United States by March 3, 1998.

As previously discussed, the applicant subsequently submitted the Form I-687, application for temporary residence on December 15, 2005. At parts #16, 17, and 18 of the Form I-687 application, the applicant claimed that he last entered the United States without being inspected by crossing the Mexican border without a visa on August 8, 1998. The applicant also submitted a Form I-690 waiver application on December 15, 2005.

The Immigration Judge granted the applicant voluntary departure until March 3, 1998 with an alternate order of deportation thereafter. The record contains no evidence to demonstrate that the applicant complied with the Immigration Judge's grant of voluntary departure from the United States by March 3, 1998. Further, the applicant has acknowledged that he departed this country on an unspecified date and then subsequently reentered the United States without inspection on August 8, 1998. Without evidence to the contrary, it must be concluded that the applicant departed this country under an outstanding order of removal after March 3, 1988, and that such departure constituted a self-deportation. The fact that the applicant admitted that he subsequently reentered the United States without inspection on August 8, 1998 renders him inadmissible under section 212(a)(9)(C)(i)(II) of the Act.

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. 8 C.F.R. § 245a.2(d)(5). The applicant has failed to meet this burden as he is he is inadmissible under section 212(a)(9)(C)(i)(II) of the Act and such ground of inadmissibility has not been waived. For this additional reason, the application may not be approved.

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