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U.S. Citizenship
and Immigration
Services

FILE:



Office: NEW YORK

Date:

SEP 20 2007

MSC 05 182 10486

IN RE:

Applicant:



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:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case 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, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director determined 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 of May 5, 1987 to May 4, 1988. Therefore, the district director determined that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements and denied the application.

On appeal, the applicant submits a statement and copies of documents previously submitted in response to the notice of intent to deny.

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 Immigration and Nationality Act (Act), 8 U.S.C. § 1255a(a)(2).

An applicant 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, 8 U.S.C. § 1255a(a)(3).

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. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

An alien shall be regarded as having resided continuously in the United States if at the time of filing an application for temporary resident status, no single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, through the date the application is filed, unless the alien can establish that due to emergent reasons the return to the United States could not be accomplished within the time period allowed, the alien was maintaining residence in the United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.1(c).

If the applicant's absence exceeded the 45-day period allowed for a single absence, it must be

determined if the untimely return of the applicant to the United States was due to an "emergent reason." Although this term is not defined in the regulations, *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988), holds that emergent means "coming unexpectedly into being."

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 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 issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he resided 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 of 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 and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on March 31, 2005. At part #30 of the Form I-687 application where applicants are instructed to list all residences in the United States since first entry, the applicant indicated that he resided at "1548 40th Street, #1-F,

Brooklyn, New York” from June 1981 to September 1999 and at [REDACTED] New York, New York” from October 1999 to December 2002. At part #32 of the Form I-687, where applicants are instructed to list all absences outside the United States, the applicant indicated that he was in Bangladesh visiting family from May 1987 to July 1987. At part #33, where applicants are instructed to list all employment since initial entry into the United States, the applicant indicated that he had been “self-employed as door to door daily basis labor” since October 1980.

At his interview with a CIS officer on February 21, 2006, the applicant stated that he first entered the United States in July 1980 with his uncle, [REDACTED]. He claimed that he and his uncle used a false passport and visa to gain admission to the United States in 1980. When the CIS officer asked if he had any of his old passports, the applicant stated that he lost all his old passports. The applicant stated that his uncle left the United States at the end of 1992 and passed away in 1995. The applicant then revised his claim, stating that he lived with his uncle in Brooklyn, New York, until the end of 1999. The CIS officer who conducted the interview specifically verified with the applicant his statement that he lived with his uncle until 1999, and pointed out that he had just indicated that his uncle left the United States in 1992 and died in 1995. The applicant, in response, revised his claim yet again, this time stating that that he lived with his uncle until 1989, not until 1999 as he had previously stated.

The applicant obviously could not have lived with his uncle in Brooklyn, New York, until 1999 if, as he had previously stated, his uncle left the United States to return to Bangladesh in 1992 and died in 1995. This discrepancy raises questions of credibility regarding the applicant’s 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 application. Further, it is incumbent on 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 lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582. (Comm. 1988).

When the CIS officer asked the applicant about any absences outside the United States during the requisite period, he replied that he lived and worked in the United States until May 1987, at which time he returned to Bangladesh due to the death of his grandfather. He claimed that he returned to the United States in July 1987 on a ship from Bangladesh via the Bahamas and the port of Miami, Florida.

When the CIS officer questioned the applicant in more detail about his previous passports, the applicant claimed that he had been issued a passport by the Bangladeshi consulate in the United States in 1985, but realized he had lost that passport in 1985 and got a new passport in 1995.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant submitted a letter dated October 20, 1989, from Md. [REDACTED] of the Greater Comilla Association, U.S.A., located in Brooklyn, New York. [REDACTED] stated that the applicant had been a member of his organization since 1982. [REDACTED] stated, “[s]o far my knowledge goes

he entered the United States before January 1, 1982, and since then he has been residing continuously in an unlawful manner except for a short absence. . . .”

Pursuant to 8 C.F.R. § 245a.2(d)(3)(v), attestations by churches or other religious institutions to an alien’s residence in the United States during the period in question must: (A) identify the applicant by name; (B) be signed by an official (whose title is shown); (C) show inclusive date of membership; (D) state the address where the applicant resided during the membership period; (E) include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; (F) establish how the author knows the applicant; and, (G) establish the origin of the information being attested to. The affidavit from [REDACTED] does not conform to this standard. [REDACTED] did not provide the applicant’s addresses in the United States during the requisite period. Nor did he provide any information regarding the basis of his knowledge that the applicant entered the United States prior to January 1, 1982 and had resided continuously in the United States since that date except for a short absence.

It is noted that the seal of Greater Comilla Association, U.S.A. on the letterhead indicates that this organization was founded in 1991. Since the organization was not founded until 1991, the applicant could not possibly have been a member of this organization since 1982 as stated by [REDACTED]. The applicant has not provided any explanation for this discrepancy.

The applicant also submitted a letter dated December 10, 1991, from Sikder M. [REDACTED] Consul, Consulate General of the People’s Republic of Bangladesh, in New York, New York. [REDACTED] stated that the applicant’s previous passport No. [REDACTED] was issued by the New York consulate on June 10, 1985.

The record contains a photocopy of the applicant’s current Bangladesh passport No. [REDACTED] issued in New York, New York, on March 14, 2005. There is a notation on Page 9 of the applicant’s current passport stating, “The holder has previously traveled on Passport No. [Not Known] dated [Not Known] which is reported lost.”

The applicant included an affidavit dated March 10, 1990, from [REDACTED] a resident of Brooklyn, New York. [REDACTED] stated that the applicant had lived with him at “[REDACTED] Brooklyn, New York” from July 1980 to September 1989. [REDACTED] further stated that the rent receipts and household bills were all in his name and the applicant contributed toward payment of the rent and household bills. The applicant stated on the Form I-687 that he resided at that address from July 1981 to September 1999, not from July 1980 to September 1999 as stated by [REDACTED]. The applicant has not provided any explanation for this discrepancy.

The applicant provided an affidavit dated November 24, 2004, from [REDACTED] Alam, a resident of Brooklyn, New York. [REDACTED] stated that he had known the applicant since 1980 when he met the applicant at a community social function. [REDACTED] further stated that the applicant entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status except for a “short absence.” [REDACTED] did not provide the applicant’s address in the United States during the requisite period. Nor did he provide any information

regarding the basis of his knowledge that the applicant entered the United States prior to January 1, 1982 and had resided continuously in the United States in an unlawful status since that date.

The applicant also included an affidavit dated May 25, 2005, from [REDACTED] a resident of Woodside, New York. [REDACTED] stated that he had known the applicant since August 1980 when he met him at a community function held in Jackson Heights, New York. [REDACTED] further stated that the applicant was outside the United States from May 16, 1987 to July 8, 1987, when the applicant was visiting his family in Bangladesh. [REDACTED] stated that the applicant resided at [REDACTED], Brooklyn, New York" from July 1980 to September 1999. This statement contradicts the applicant's statement on the Form I-687 that he resided at that address from June 1981 to September 1999. The applicant has not provided any explanation for this discrepancy in his claimed dates of residence at that address.

The applicant provided an affidavit dated March 20, 1988, from [REDACTED] of H-A-M Construction, located at [REDACTED] Astoria, New York." A typed notation at the upper left portion of the letter indicates that the letter is written in reference to [REDACTED], New York, NY 10002. [REDACTED] stated in the body of the letter that he had known [REDACTED]" since 1981. [REDACTED] further stated that "[REDACTED] Talukder" had entered the United States prior to January 1, 1982, and resided continuously in this country since that time except for an absence in Bangladesh between "May 1987 and May 1988." The fact that the notation indicates that the letter is in reference to the applicant, but [REDACTED] refers to another individual, "[REDACTED]" in the body of the letter, raises questions regarding the credibility of [REDACTED] testimony in his affidavit.

The applicant also provided an affidavit dated May 25, 2004, from [REDACTED] a resident of Brooklyn, New York. [REDACTED] stated that he had known the applicant since January 1981. He further stated that the applicant entered the United States before January 1, 1982, and had been continuously physically present in the United States except for a short absence. [REDACTED] did not provide any information regarding how he met the applicant, the frequency of his contact with the applicant, or how he could attest that the applicant entered the United States prior to January 1, 1982. Furthermore, [REDACTED] did not provide the applicant's addresses in the United States during the requisite period.

The applicant submitted an affidavit dated December 12, 2004, from [REDACTED] [REDACTED] stated that he had known the applicant since 1980 and that the applicant had resided continuously in the United States in an unlawful status from before January 1, 1982 "until some time between May 5, 1987 and May 4, 1988." [REDACTED] did not provide any information as to how he met the applicant or the basis of his knowledge that the applicant had resided in the United States during the requisite period. Nor did [REDACTED] provide the applicant's addresses in the United States during the requisite period. Additionally, [REDACTED] did not provide his phone number or address so he could be contacted to verify the information provided in his affidavit. Therefore, this affidavit will be accorded little evidentiary weight.

The applicant also submitted a personal affidavit dated March 26, 2005, in which he stated that he left the United States on May 16, 1987, to visit his family in Bangladesh. He further stated that he returned to the United States on July 8, 1987 "without visa and inspection."

On February 22, 2006, the district director informed the applicant of her intent to deny his application. The district director noted that the applicant himself stated in his affidavit that he was outside the United States from May 16, 1987 to July 8, 1987, a total of fifty-three days, an absence that exceeds the 45-day absence allowed for a single absence outside the United States as set forth at 8 C.F.R. § 245a(1)(c).

The district director further noted that the applicant stated during the legalization interview that his previous passport was issued by the United States Consulate in New York in 1985, but the photocopy of the applicant's current passport contains an official stamp indicating that the applicant's previous passport, which was reported stolen, had been issued in [REDACTED] on an unknown date, not in New York as stated by the applicant during his interview. The district director stated that this contradiction raised questions of doubt regarding the veracity of the applicant's testimony during his interview.

The district director further noted that the letter from [REDACTED] stated that the applicant had been a member of that organization since 1982, but the organization seal on the letterhead indicated that the organization was not founded until 1991.

The district director also stated that the affidavit dated March 20, 1988, from [REDACTED] referred to the continuous residence in the United States of another individual [REDACTED] rather than to the applicant. Furthermore, the district director noted that the applicant's address as of March 20, 1988, was listed on the affidavit from [REDACTED] as "[REDACTED] New York, New York," but the applicant indicated on the Form I-687 that he resided at [REDACTED] 1-F, Brooklyn, New York" during the period from June 1981 to September 1999. Finally, the district director noted that the applicant's address as listed on the affidavit from [REDACTED] "201 [REDACTED] New York, New York," was a federal building at the time the letter was written, and was, in fact, the location of the New York District Office of the former Immigration and Naturalization Service.

The district director granted the applicant 30 days to submit additional evidence to overcome the discrepancies and contradictions noted above.

The applicant, in response, claimed in a personal affidavit dated March 10, 2006, that he was issued a passport by the General Consulate of Bangladesh in New York, New York, in 1985, but he lost that passport while he was in Bangladesh visiting family in 1987. He stated that he was issued another passport in Bangladesh after his arrival there in May of 1987. However, the applicant did not submit any independent evidence to corroborate his statement.

The applicant conceded that he was outside the United States for 53 days during the requisite period. He claimed that his stay in Bangladesh was extended beyond the 45-day period allowed for a single absence because of his father's poor health and his grandfather's death.

An alien shall be regarded as having resided continuously in the United States if at the time of filing an application for temporary resident status, no single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, through the date the application is filed, unless the alien can establish that due to emergent reasons the return to the United States could not be accomplished within the time period allowed, the alien was maintaining residence in the United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.1(c).

If the applicant's absence exceeded the 45-day period allowed for a single absence, it must be determined if the untimely return of the applicant to the United States was due to an "emergent reason." Although this term is not defined in the regulations, *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988), holds that emergent means "coming unexpectedly into being."

In this case, the applicant has claimed that he was in Bangladesh for 53 days due to his grandfather's death and his father's illness, but he has not provided any evidence to corroborate his claim. If the applicant went to Bangladesh in 1987 because of his father's illness as he claims, he could have reasonably anticipated that an absence for such a purpose would have likely been an extended one. In the absence of clear evidence that the applicant intended to return within 45 days, it cannot be concluded that an emergent reason "which came suddenly into being" delayed the applicant's return to the United States beyond the 45-day period. Therefore, it cannot be concluded that he resided continuously in the United States for the requisite period.

As to the discrepancy regarding his dates of membership in the Greater Comilla Association, U.S.A., the applicant stated that this was a typographical or clerical error. He submitted a letter dated January 10, 2006, signed by ██████████ President of Greater Comilla Association, U.S.A., stating that the applicant had been a member of that organization since 1991. ██████████ did not explain how the previous letter could have been dated October 20, 1989 since the organization was not founded until 1991. Nor did he explain why the previous letter stated that the applicant had been a member of that organization since 1982 when the organization was not founded until 1991. Therefore, this letter will be accorded little evidentiary weight.

With regard to the letter from ██████████ regarding the residence of ██████████ in the United States during the requisite period, the applicant stated that ██████████ was his roommate at that time and name ██████████ was mistakenly typed on the letter instead of his name. The applicant submitted a letter dated March 20, 1988, from ██████████ ██████████ stated that he had known the applicant since 1981. He further stated that the applicant entered the United States before January 1, 1982, and had been continuously residing in the United States "in an unlawful manner except for a brief absence for visiting his family in Bangladesh in 1987." ██████████ did not provide any information regarding how he met the applicant, the basis of

his knowledge that the applicant resided in the United States during the requisite period, or the applicant's addresses in the United States during the requisite period.

It is noted that [REDACTED] provided no explanation as to why his previous affidavit attested to the residence of [REDACTED] in the United States when the notation at the beginning of the affidavit indicated that that the affidavit was intended to attest to the applicant's residence in the United States during the requisite period. The vague nature of [REDACTED] testimony in the current affidavit, combined with the fact that the previous affidavit attested to the residence of [REDACTED] in the United States during the requisite period, raises questions of credibility regarding [REDACTED] testimony.

With regard to the address listed on the Form I-687 for the period from October 1999 to December 2002, the applicant stated that the address listed on the Form I-687 [REDACTED] New York, New York" was "mistakenly written on my document submitted. My right address was [REDACTED] Long Island City, New York since 10/99 to 12/2002." The applicant's explanation that he "mistakenly" listed the address of a federal building in New York, New York, as his personal address from October 1999 to December 2002 is not credible.

The applicant submitted an affidavit dated February 15, 2006, from [REDACTED] a resident of Brooklyn, New York. [REDACTED] stated that he personally knew that the applicant "came to the USA as an EWI sometimes [sic] back in July 1980 so far I know from him while I met him first time at that time." However, [REDACTED] did not provide any information as to how he met the applicant, the frequency of his contact with the applicant, or the applicant's addresses during the requisite period. Furthermore, it appears that [REDACTED] is relying upon second-hand information provided to him by the applicant when he states that he has knowledge that the applicant first entered the United States in July 1980. Therefore, this affidavit will be accorded little evidentiary weight.

The applicant included an affidavit dated February 6, 2006, from [REDACTED] a resident of Floral Park, New York. [REDACTED] stated in his affidavit that he personally knew that the applicant entered the United States without inspection "sometimes back on July 1980 so far I know from him while I met him first time at that time." It is noted that the wording of this affidavit is identical to the wording of the affidavit from [REDACTED]. As with [REDACTED] did not provide any information as to how he met the applicant, the frequency of his contact with the applicant during that period, or the applicant's addresses in the United States during the requisite period. Additionally, it appears that [REDACTED] relied upon second-hand information provided to him by the applicant when he stated that he had personal knowledge that the applicant first entered the United States in July 1980. Therefore, this affidavit will be accorded little evidentiary weight.

The applicant also included a letter dated February 21, 2000, from [REDACTED] Manager of Copy Door II located at [REDACTED] New York, New York." [REDACTED] stated that the applicant was working for him part-time for a salary of \$120 per week.

Pursuant to 8 C.F.R. § 245a.2(d)((3)(i), letters from employers should be on letterhead stationery, if the employer has such stationery, and must include: (A) the alien's address at the time of

employment; (B) the exact period of employment; (C) periods of layoff if any; (D) duties with the company; (E) whether or not the information was taken from official company records; and (F) where records are located and whether CIS may have access to the records. The affidavit from [REDACTED] does not conform to this standard. [REDACTED] did not provide any information as to when the applicant began working for him or the applicant's duties for his company.

The applicant provided a letter dated December 5, 2005, from Julkiyl Choudhury of the Islamic Council of America Inc, [REDACTED] located at "[REDACTED] New York, New York." [REDACTED] stated that when he was the [REDACTED] during the period from 1982 to 1986, he sometimes saw the applicant during the Friday prayers and other Islamic holidays. The letter from [REDACTED] does not conform to the standard set forth at 8 C.F.R. § 245.2(d)(e)(v). [REDACTED] did not provide the applicant's addresses during the membership period.

The applicant also provided a letter dated October 10, 1987, from [Name illegible] [REDACTED] General Secretary of the Islamic Council of America, Inc., located at [REDACTED] New York, New York." [REDACTED] stated that the applicant, "whom we know since 1981," used to come to Madina Masjid every Friday. This affidavit does not conform to the standard set forth at 8 C.F.R. § 245a.2(d)(3)(v). [REDACTED] did not provide the applicant's addresses during the requisite period.

The applicant submitted a photocopy of a letter dated May 4, 1989, from [REDACTED] M.D., stating that the applicant was under his care "due to his appendix pain" on April 24, 1988. However, [REDACTED] did not provide copies of medical records or billing statements in support of his statement. Nor did he provide any specific and verifiable information such as the applicant's addresses in this country as of the date he treated the applicant for "appendix pain."

The applicant also submitted a photocopy of a purchase receipt from Churchill Furniture Rentals located at [REDACTED] New York, New York" relating to furniture rented by the applicant on May 15, 1981. The year of rental on this receipt, "81," appears to have been altered. Therefore, this document will be accorded no evidentiary weight.

The applicant also submitted a photocopy of a receipt dated August 16, 1985, for purchase of a Hotpoint refrigerator from Top Value Appliance Corp., located at "1865 86th St., Brooklyn, New York," by [REDACTED]

Additionally, the applicant provided a purchase contract dated June 10, 1986, between the applicant and Elegant Entries, Incorporated, located at "4911 Avenue N, Brooklyn, New York" for removal of the existing garage door and installation of a new garage door and an electric garage door opener at a residence located at "1548 40th Street, Brooklyn, New York." The applicant indicated on the current Form I-687 that he was renting Apartment #1-F in an apartment building located at this address as of June 10, 1986. However, the applicant has not explained why he would be required to pay to have a new garage door and garage door opener installed at a building where he was renting an apartment.

The applicant provided an original construction proposal from ██████████ Construction located at “██████████ Street, Brooklyn, New York,” concerning a construction project for ██████████ at a property located at “1459 Walton Avenue, Brooklyn, New York.” The proposal, which was signed by ██████████ is dated November 10, 1986. The applicant’s name appears on the block entitled “Date of Plans.” There is no signature of a representative of Octavio Construction on the proposal form. It appears that the applicant’s name has been entered in the “Date of Plans” block of the proposal form after the fact. The applicant has not claimed, or provided any evidence to establish, that he ever worked for Octavio Construction. Furthermore, the “6” in the year 1986 on the document appears to have been altered. Therefore, this document will be accorded no evidentiary weight.

Finally, the applicant submitted an original air mail envelope apparently postmarked on January 11, 1983, that is addressed to him at “██████████, Brooklyn, NY 11215.”

The district director determined that the applicant had failed to submit sufficient credible evidence establishing his continuous residence in this country since prior to January 1, 1982, and, therefore, denied the application on March 21, 2006.

On appeal, the applicant repeats his claim that his return to the United States in 1987 was delayed beyond the allotted 43-day period due to his father’s illness and his grandfather’s deaths. He also repeats his claim that the numerous errors noted above in his supporting documentation were all due to “clerical mistakes.” However, the applicant did not provide any independent evidence to corroborate his claims or to overcome the grounds for denial of the application.

As previously stated, the applicant submitted an original airmail envelope apparently postmarked on January 11, 1983. The envelope bears two Bangladeshi postage stamps with a value of three takas each depicting a watermelon and the scientific name of the watermelon, “*Citrullus vulgaris*.” This stamp is listed on page 685 of Volume 1 of the *2007 Scott Standard Postage Stamp Catalogue* and is listed as catalogue number 367 A134. The catalogue lists the date of issue of this stamp as July 18, 1990, seven and one half years after the purported postmark date on the envelope.

The fact the envelope bears stamps that were not issued until well after the date of the postmark establishes that the applicant utilized a document in a fraudulent manner and made material misrepresentations in an attempt to establish residence within the United States for the requisite period.

Section 212(a)(6)(C) of the Act provides:

Misrepresentation. – (i) In general. – Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

In this case, the applicant has utilized documents in a fraudulent manner and made material misrepresentations regarding his dates of absence outside the United States. 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. In addition, the applicant rendered himself inadmissible to the United States pursuant to section 212(a)(6)(C) of the Act by attempting to obtain an immigration benefit through the use of fraud and willful misrepresentation of a material fact.

The AAO issued a notice to the applicant on August 3, 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. The AAO further informed the applicant that he was inadmissible to the United States under section 212(a)(6)(C) of the Act as a result of his actions. The applicant was granted fifteen days to provide substantial evidence to overcome, fully and persuasively, these findings. However, as of the date of this decision the applicant has failed to submit a statement, brief, or evidence addressing the adverse information relating to the applicant's claim of residence in the United States since prior to January 1, 1982. 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 absence of credible and/or sufficiently detailed supporting documentation and the fact that the applicant used a document in a fraudulent manner and made material misrepresentations all seriously undermine 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. Furthermore, the applicant was outside the United States for more than 45 days in a single absence and has failed to establish that an emergent reason that came suddenly into being delayed his return to the United States beyond the 45-day period. 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 to May 4, 1988 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 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.

In addition, the fact 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 rendered him inadmissible to this country pursuant to section 212(a)(6)(C) of

the Act. 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. The applicant failed to establish that he is admissible to the United States as required by 8 C.F.R. § 245a.2(d)(5). Consequently, the applicant is ineligible to adjust to temporary residence under section 245A of the Act on this basis as well.

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