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20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

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FILE:

[REDACTED]

Office: ATLANTA

Date: DEC 03 2008

MSC 05 095 10021

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:

SELF-REPRESENTED

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.

  
John F. Grissom, Acting 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 Citizenship and Immigration Services or CIS) 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, the applicant asserted that he had submitted sufficient evidence to establish his residence in the United States since prior to January 1, 1982. The applicant objected to the fact that the director failed to acknowledge his response to the notice of intent to deny. The applicant submitted a copy of an affidavit that constituted his response to the notice of intent to deny.

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 CIS on January 3, 2005.

In support of his claim of continuous residence in the United States from prior to January 1, 1982, the applicant submitted three affidavits, two photocopied photographs, a greeting card, and two stamped envelopes that were postmarked March 8, 1982 and April 15, 1987, respectively.

The director determined that the applicant failed to submit sufficient evidence demonstrating his residence in the United States in an unlawful status from prior to January 1, 1982. Therefore, the director concluded that the applicant was ineligible to adjust to temporary residence and denied the Form I-687 application on February 26, 2007.

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 from prior to January 1, 1982. As noted above, the applicant included two original stamped envelopes that were postmarked March 8, 1982 and April 15, 1987, respectively, in support of his claim of residence in this country since prior to January 1, 1982. These envelopes bear Gambian postage stamps and were purportedly mailed from the Gambia to the applicant at the address he claimed to have resided in this country during the requisite period. A review of the *2008 Scott Standard Postage Stamp Catalogue Volume 3* (Scott Publishing Company 2007) reveals the following:

- The envelope postmarked April 15, 1987 bears a stamp with a value of three dalasi that depicts a butterfly, *Acraea cepheus*. This stamp is listed at page 71 of Volume 3 of the *2008 Scott Standard Postage Stamp Catalogue* as catalogue number 2922 A520. The catalogue lists this stamp's date of issue as April 4, 2005.

The fact that an envelope postmarked April 15, 1987 bears a stamp that was not issued until well after the date of this postmark establishes that the applicant utilized a document in a fraudulent manner and made material misrepresentations in an attempt to establish his residence within the United States since prior to January 1, 1982. This derogatory information 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.

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 on November 10, 2008 informing the applicant that it was the AAO's intent to dismiss his appeal based upon the fact that he 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 applicant was granted fifteen days to provide substantial evidence to overcome, fully and persuasively, these findings.

In response, the applicant submits an affidavit signed by [REDACTED] who indicates that he that he is the applicant's relative living the Gambia. Mr. [REDACTED] asserts that the applicant recently requested that he go through the correspondence that the applicant's father had previously sent to the applicant while he was living in the United States during the period in question. [REDACTED]

purports that he found three such pieces of correspondence, affixed three new Gambian postage stamps to the three pieces of correspondence, and mailed the three pieces of correspondence to the applicant. Mr. [REDACTED] claims that he was unaware of the ramifications of this action and the applicant had no knowledge that he had affixed new postage stamps to the three pieces of correspondence. However, the explanation put forth by [REDACTED] regarding how a Gambian stamp issued on April 4, 2005 became affixed to an envelope postmarked on April 15, 1987 is wholly inadequate in that a portion of the April 15, 1987 postmark covers the stamp in question thereby establishing that the stamp was affixed to envelope before the postmark was placed on the envelope.

The existence of derogatory information that establishes the applicant used a postmarked envelope 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.

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