



U.S. Citizenship
and Immigration
Services

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FILE:

Office: NEW YORK

Date: DEC 11 2008

MSC 05 244 14604

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.

IN BEHALF OF APPLICANT:

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, counsel asserted that the applicant submitted sufficient evidence to demonstrate his claim of residence in the United States for the requisite period. Counsel objected to the conduct of the CIS officer who conducted the applicant's interview and contended that any findings derived from the applicant's purported testimony were tainted by the interviewing officer's misconduct. Counsel submitted documentation 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 “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 June 1, 2005.

In support of his claim of continuous residence in the United States from prior to January 1, 1982, the applicant submitted three employment letters, eleven affidavits, two letters from a physician's office, a photocopied receipt, and a photocopy of an envelope postmarked January 5, 1982.

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 district director concluded that the applicant was ineligible to adjust to temporary residence and denied the Form I-687 application on September 8, 2006.

Counsel's remarks on appeal relating to the conduct of the CIS officer who interviewed the applicant and his objections to any findings derived from the applicant's purported testimony during this interview are noted. The evidence in the record relating to the applicant's testimony at his interview on April 1, 2003 is skeletal and speculative in nature. Although the director previously issued a notice of intent to deny containing over two pages of specific questions purportedly asked by the interviewing officer and the responses provided by the applicant during this interview, the record does not contain any contemporaneous account of these questions and responses. Regardless, the district director's conclusions regarding the effect of testimony provided by the applicant must be considered as harmless error as the AAO conducts a de novo review, evaluating the sufficiency of the evidence in the record according to its probative value and credibility as required by the regulation at 8 C.F.R. § 245a.2(b).

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 provided a photocopied envelope that is postmarked January 5, 1982 in support of his claim of residence in the United States for the requisite period. This photocopied envelope contains two Bangladeshi postage stamps and was purportedly mailed from Bangladesh to the applicant at the address he claimed to have resided on the date of the postmark. A review of the *2006 Scott Standard Postage Stamp Catalogue* Volume 1 (Scott Publishing Company 2005) reveals the following:

- The photocopied envelope bears a stamp with a value of five takas that depicts the Khulna Post Office. This stamp is listed at page 661 of Volume 1 of the *2006 Scott Standard Postage Stamp Catalogue* as catalogue number 242A A70. The catalogue lists this stamp's date of issue as December 21, 1983. The photocopied envelope also bears a stamp that is valued at two takas, contains a stylized illustration of a baby crawling on all fours, and commemorates an expanded immunization program. This stamp is listed at page 665 of Volume 1 of the *2006 Scott Standard Postage Stamp Catalogue* as catalogue number 379A A139a. The catalogue lists the date of issue for this stamp as November 29, 1990.

The fact that an envelope postmarked January 5, 1982 bears two stamps that were not issued until well after the date of this postmark 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 since prior to January 1, 1982. This derogatory information casts doubt on the applicant's 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 and counsel on November 4, 2008 informing the parties that it was the AAO's intent to dismiss the applicant's appeal based upon the fact that the applicant 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 and counsel were granted fifteen days to provide substantial evidence to overcome, fully and persuasively, these findings.

In response, both the applicant and counsel submitted statements objecting to the findings relating to the envelope postmarked January 5, 1982 as cited within the AAO's notice of November 4, 2008. The applicant includes documentation in support of his response. Specifically, the parties object to the AAO's reliance upon the *Scott Standard Postage Stamp Catalogue* as a basis of authority regarding postage stamps because it is not an official government source but is instead published by a private company. It is acknowledged that the *Scott Standard Postage Stamp Catalogue* is published by a private company, Scott Publishing Co, a subsidiary of Amos Press Inc. A review of the Amos Press Inc., internet website at <http://www.amospress.com/History.aspx> reveals the following:

In 1984 Amos Publishing became the world's largest philatelic publisher with the purchase of Scott Publishing Company. Scott is the most recognized name in stamp collecting and is both a publisher and merchandiser of stamp related products. The internationally renowned, 8-volume *Scott Standard Postage Stamp Catalogue* is produced annually to assist collectors in valuing and identifying their stamp holdings. A monthly magazine is also produced under the Scott name which provides collectors with entertaining and informative feature articles along with the very latest new stamp issues from around the world.

While the *Scott Standard Postage Stamp Catalogue* is privately published, it is considered to be so authoritative on the subject of postage stamps and philately (stamp collecting) that the United States Postal Service has adopted the *Scott* Numbering System as its own for identification purposes of all postage stamps issued by the United States. Further, recent editions of the *Scott Standard Postage Stamp Catalogue* are maintained at the reference desks of a large number of public libraries in the United States because the catalogue is considered to be an authoritative resource source on the subject of postage stamps and philately.

The applicant infers that the AAO erred in relying upon 2006 edition of the *Scott Standard Postage Stamp Catalogue* rather than the more up to date 2009 edition of the catalogue to make findings relating to the envelope postmarked January 5, 1982. However, the only relevant and

major difference between yearly editions of the catalogue is the inclusion of postage stamps issued after the publication date of the previous annual edition.

The applicant claimed that he personally contacted the General Post Office of Dhaka, Bangladesh and was informed that Bangladeshi postage stamps were often reprinted and re-circulated over time. The applicant notes that a Bangladeshi stamp with a value of one taka containing an illustration of the Court of Justice is listed at page 732 of Volume 1 of the 2009 *Scott Standard Postage Stamp Catalogue* as catalogue number 52 A9. The applicant also noted that a Bangladeshi stamp with a value of fifty paisa containing an illustration of a Hilsa fish is listed at page 732 of Volume 1 of the 2009 *Scott Standard Postage Stamp Catalogue* as catalogue number 48 A8. The applicant declares that the 2009 *Scott Standard Postage Stamp Catalogue* reflects that both stamps were first issued on April 30, 1973 but fails to list any subsequent issues of these two stamps. The applicant states that the internet website at <http://www.bdstamps.com> reflects that the one taka stamp depicting the Court of Justice was originally issued in 1973 and subsequently reissued in 1974 and 1976, and that the fifty paisa stamp depicting the Hilsa Stamp was originally issued in 1973 and subsequently reissued in 1976.

However, a review of the entries for stamps 42 A7 through 55 A9 at page 732 of Volume 1 of the 2009 *Scott Standard Postage Stamp Catalogue* reveals a note at the bottom of the listing for these stamps stating "See Nos. 82-85, 95-106, 165-176, 356. For overprints see Nos. 01-010, 013." This reference relates to subsequent issues for the series of stamps with catalogue numbers 42 A7 through 55 A9. A review of page 733 of Volume 1 of the 2009 *Scott Standard Postage Stamp Catalogue* reveals that the top portion of the first column of this page contains an entry with the heading "Type of 1973 Taka Expressed in Bengali." The one taka stamp depicting the Court of Justice is listed at page 733 of Volume 1 of the 2009 *Scott Standard Postage Stamp Catalogue* as catalogue number 82 A9. The catalogue lists 1974-1975 as the date of issue for this stamp, 82 A9, and associated stamps with catalogue numbers 83 A9, 84 A9, and 85 A9. Further review of page 733 of Volume 1 of the 2009 *Scott Standard Postage Stamp Catalogue* reveals an entry with the heading "Type of 1973 Redrawn" at the bottom portion of the first column and the top portion of the second column of this particular page. The one taka stamp depicting the Court of Justice is subsequently listed again at page 733 of Volume 1 of the 2009 *Scott Standard Postage Stamp Catalogue* as catalogue number 103 A9. In addition, the fifty paisa stamp depicting a Hilsa fish is listed at page 733 of Volume 1 of the 2009 *Scott Standard Postage Stamp Catalogue* as catalogue number 99 A8. The catalogue lists 1976-1977 as the date of issue for stamps, 99 A8 and 103 A9, and associated stamps with catalogue numbers 95 A7, 96 A7, 97 A7, 98 A7, 100 A7, 101 A7, 102 A7, 104 A9, 105 A9, and 106 A9.

It must be noted that neither counsel nor the applicant has offered an explanation as to how an envelope postmarked January 5, 1982 contains one stamp that was not issued until December 21, 1983 and another separate stamp that was not issued until November 29, 1990. A review of the website <http://www.bdstamps.com> confirms that the five taka stamp depicting the Khulna Post Office with *Scott* catalogue number 242A A70 was issued on December 21, 1983. This same

website <http://www.bdstamps.com> also confirms that the two taka stamp containing a stylized illustration of a baby crawling on all fours commemorating an expanded immunization program with *Scott* catalogue number 379A A139a was issued on November 29, 1990.

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