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U.S. Citizenship
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Services

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[REDACTED]

FILE:

[REDACTED]

Office: BALTIMORE

Date: **APR 09 2009**

MSC 04 329 23005

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.

ON 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.

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, Baltimore, Maryland, 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 this country for the requisite period. Counsel asserted that the applicant had submitted sufficient evidence, including original postmarked envelopes, in support of such claim.

Subsequent to the filing of the appeal, the applicant submitted a letter to the AAO on March 30, 2009 requesting that his Form I-687 application and corresponding appeal be withdrawn. Although this request to withdraw the appeal shall be honored, the following facts must be noted.

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.

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 August 24, 2004. In support of his claim of continuous unlawful residence in the United States since prior to January

1, 1982, the applicant submitted documentation including original envelopes postmarked August 25, 1981, October 10, 1981, an indeterminate day and month in 1981, March 28, 1982, and the eighteenth day of an indeterminate month in 1982, respectively. The envelopes bear Ghanaian postage stamps and were represented as having been mailed from Accra, Ghana to the applicant at the address he claimed to have resided in this country on the date of these respective postmarks. A review of the *2009 Scott Standard Postage Stamp Catalogue Volume 3* (Scott Publishing Company 2008) reveals the following:

- The envelopes postmarked August 25, 1981, October 10, 1981, an indeterminate day and month in 1981, and March 28, 1982 all bear the same stamp with a value of twenty pesewas that commemorates the 1982 World Cup hosted by Spain. This stamp contains a stylized illustration of a soccer goalie attempting to make a save on a kick under the printed notation "World Football Championship 1982." The stamp is listed at page 256 of Volume 3 of the *2009 Scott Standard Postage Stamp Catalogue* as catalogue number [REDACTED]. The catalogue lists this stamp's date of issue as July 19, 1982.

The fact that original envelopes postmarked August 25, 1981, October 10, 1981, an indeterminate day and month in 1981, and March 28, 1982 all bear a stamp that was not issued until after the date of these respective postmarks establishes that the applicant utilized these documents in a fraudulent manner and made material misrepresentations in an attempt to establish his residence within the United States for the requisite period. By engaging in such action, the applicant 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.

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. 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).

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. Consequently, the applicant is ineligible to adjust to temporary permanent residence under section 245A of the Act and the terms of the CSS/Newman Settlement Agreements on this basis.

ORDER: The appeal is dismissed based upon its withdrawal. This decision constitutes a final notice of eligibility.