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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
and Immigration
Services

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FILE: [Redacted]
MSC 04 352 10083

Office: LOS ANGELES

Date: AUG 12 2009

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, Los Angeles, California, 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 she had continuously resided in the United States in an unlawful status since before January 1, 1982 through the date that she 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 the United States for the requisite period and asserted that the applicant submitted sufficient evidence to establish such claim. Counsel included copies of previously submitted documentation as well as new documents in support of the applicant's 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 her 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 September 16, 2004.

In support of her claim of residence in the United States for the requisite period, the applicant submitted affidavits of residence, an original receipt, an appointment schedule, a paystub, an employment letter, photocopied receipts, a letter relating to the applicant's absence from this country in 1988, photocopied pages from a savings account passbook, a photocopied Form 1040A, Federal Tax Return, a photocopied Form W-2, Wage and Tax Statement, certificates of achievement, a California Driver License, and original envelopes postmarked April 15, 1981, November 20 1981, November 20, 1981, April 15, 1982, and July 22, 1986, respectively.

The director determined that the applicant failed to submit sufficient evidence demonstrating her residence in the United States in an unlawful status for the requisite period. Therefore, the

director concluded that the applicant was ineligible to adjust to temporary residence and denied the Form I-687 application on March 12, 2007.

Counsel's remarks on appeal relating to the sufficiency and quality of the evidence the applicant submitted in support of her claim of continuous 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 her claim of residence in this country for the requisite period. As has been previously discussed, the applicant submitted supporting documentation including original envelopes postmarked April 15, 1981, November 20 1981, November 20, 1981, April 15, 1982, and July 22, 1986. One of the two envelopes postmarked November 20, 1981 and the envelope postmarked July 22, 1986 contain United States postage stamps and were represented as having been mailed from the applicant with return addresses in the United States to Mexico during the requisite period. The envelope postmarked April 15, 1982 contains Mexican postage stamps and was represented as having been mailed from the applicant with a return address in the United States to Mexico during the required period. The envelope postmarked April 15, 1981 and the remaining envelope postmarked November 20, 1981 contain Mexican postage stamps and were represented as having been mailed from Mexico to the applicant at addresses that she claimed as residences in the United States during the period in question. A review of the *2009 Scott Standard Postage Stamp Catalogue Volumes 1 and 4* (Scott Publishing Company 2008) reveals the following:

- The envelope postmarked April 15, 1981 bears a Mexican stamp with a value of fifty pesos. This stamp contains a stylized illustration of a sliced tomato, the Spanish word for tomato "tomate," and the notation "Mexico Exporta" encircling an eagle's head in the right hand corner. This stamp is listed at page 918 of Volume 4 of the *2009 Scott Standard Postage Stamp Catalogue* as catalogue number [REDACTED]. The catalogue lists this stamp's date of issue as 1987. The envelope also bears a Mexican stamp with a value of three hundred pesos. This stamp contains a stylized illustration of a car, a truck, and a bus, the Spanish word for automotive vehicles, "vehiculos automotores," and the notation "Mexico Exporta" encircling an eagle's head in the right hand corner. This stamp is listed at page 918 of Volume 4 of the *2009 Scott Standard Postage Stamp Catalogue* as catalogue number [REDACTED]. The catalogue lists this stamp's date of issue as 1988.
- One of the envelopes postmarked November 20, 1981 bears a United States postage stamp with a value of five cents that contains a stylized illustration of a motorcycle and the notation "Motorcycle 1913." The stamp is listed at pages 60 and 61 of Volume 1 of *2009 Scott Standard Postage Stamp Catalogue* as catalogue number [REDACTED]. The catalogue lists this stamp's date of issue as 1983. This envelope also bears a United States stamp with a value of twenty-two cents that is a part of the American Folk Art Series and commemorates Woodcarved Figurines. The stamp contains a stylized illustration of a female Ship

Figurehead. The stamp is listed at page 70 of Volume 1 of *2009 Scott Standard Postage Stamp Catalogue* as catalogue number [REDACTED]. The catalogue lists this stamp's date of issue as October 1, 1986.

- The remaining envelope postmarked November 20, 1981 bears two of the same Mexican postage stamp each with a value of twenty pesos. The stamp contains a stylized illustration of a section of gray wrought iron fence, the Spanish words for wrought iron "hierro forjado," and the notation "Mexico Exporta" encircling an eagle's head in the right hand corner. This stamp is listed at page 908 of Volume 4 of the *2009 Scott Standard Postage Stamp Catalogue* as catalogue number [REDACTED]. The catalogue lists this stamp's date of issue as 1984.
- The envelope postmarked April 15, 1982 bears two of the same Mexican postage stamp each with a value of one hundred pesos. The stamp contains a stylized illustration of a cup filled with coffee, the Spanish word for coffee "cafe," and the notation "Mexico Exporta" encircling an eagle's head in the right hand corner. This stamp is listed at page 917 of Volume 4 of the *2009 Scott Standard Postage Stamp Catalogue* as catalogue number [REDACTED]. The catalogue lists this stamp's date of issue as 1988. The envelope also contains two of the same Mexican stamp each with a value of four hundred fifty pesos. The stamp contains a stylized illustration of a circuit board, the Spanish words for electrical components, "componentes electronicos" and the notation "Mexico Exporta" encircling an eagle's head in the right hand corner. This stamp is listed at page 920 of Volume 4 of the *2009 Scott Standard Postage Stamp Catalogue* as catalogue number [REDACTED]. The catalogue lists this stamp's date of issue as February 10, 1989.

The fact that two envelopes postmarked November 20, 1981 as well as envelopes postmarked April 15, 1981 and April 15, 1982 all bear stamps that were not issued until well 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 her residence within the United States for the requisite period. This derogatory information establishes that the applicant made material misrepresentations in asserting her claim of residence in the United States for the period in question and thus casts doubt on her 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 her own credibility, the credibility of her 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 May 20, 2009, informing the parties that it was the AAO's intent to dismiss the applicant's appeal based upon the fact that she 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, counsel submits a statement in which she asserts that information regarding the Mexican series of stamps "Mexico Exporta" in Volume 4 of the *2009 Scott Standard Postage Stamp Catalogue* was incomplete as it does not contain earlier issues of the stamps in question. Counsel indicates that the website at <http://www.galeon.com/timbresdemexico/mexicoexporta> contains a complete listing of stamps in the "Exporta" series and submits pages from the website in support of her assertions. However, a review of the website at <http://www.galeon.com/timbresdemexico/mexicoexporta> reveals that information relating to the particular series of stamps is incomplete as the website fails to list any specific issue date for any of the stamps in the "Mexico Exporta" series. Further, Volume 4 of the *2009 Scott Standard Postage Stamp Catalogue* contains a complete and comprehensive listing as it reflects that domestic stamps comprising the "Exporta" series were first issued in 1975 and continued to be issued through 1992, and airmail stamps comprising the "Exporta" series were first issued in 1975 up through 1982. The domestic stamps comprising the "Exporta" series are listed in Volume 4 of the *2009 Scott Standard Postage Stamp Catalogue* on the following pages: page 908 with catalog numbers 1109 A320 through 1138 A320; page 909 with catalog numbers 1166 A320 through 1176 A320; page 917 with catalog numbers 1465 A320 through 1470A A320; page 918 with catalog numbers 1491 A320 through 1505 A320; page 920 with catalog numbers 1583 through 1603; and, page 926 with catalog numbers 1763 A320 through 1770 A320. The airmail stamps comprising the "Exporta" series are listed in Volume 4 of the *2009 Scott Standard Postage Stamp Catalogue* on the following pages: page 953 with catalog numbers C486 AP214 through C508 AP214; and, page 956 with catalog numbers C594 AP214 through C603 AP214. Moreover, counsel fails to address the derogatory information relating to the United States postage stamps contained in the envelope postmarked November 20, 1981 that the applicant also submitted in support of her claim of residence since prior to January 1, 1982.

The existence of derogatory information that establishes the applicant used the postmarked envelopes cited above 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 her burden of proof in establishing that she 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 she has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through the time she 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 she 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).

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