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U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE:

MSC 06 076 14168

Office: NEW YORK

Date: FEB 11 2009

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:

[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, 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 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 had submitted sufficient evidence to establish such claim.

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 USCIS on December 15, 2005.

In support of his claim of residence in the United States for the requisite period, the applicant submitted affidavits of residence, an affidavit relating to the applicant’s absence from this country in 1987, a letter of membership, a letter from Eastern Airlines verifying the use of an ticket on this airline’s flight from John F. Kennedy International Airport in New York to Guayaquil, Ecuador on July 14, 1987, a photocopied airline ticket, and original envelopes postmarked October 5, 1981, December 2, 1981, April 3, 1982, September 6, 1982, July 3, 1983, August 8, 1983, May 2, 1984, June 2, 1984, January 13, 1985, April 1, 1985, April 8, 1986, May 4, 1986, and June 5, 1987.

The director determined that the applicant failed to submit sufficient evidence demonstrating his 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 July 28, 2006.

Counsel's remarks on appeal relating to the sufficiency and quality of the evidence the applicant submitted in support of his 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 his claim of residence in this country for the requisite period. As has been previously discussed, the applicant submitted original envelopes postmarked October 5, 1981, December 2, 1981, April 3, 1982, September 6, 1982, July 3, 1983, August 8, 1983, May 2, 1984, June 2, 1984, January 13, 1985, April 1, 1985, April 8, 1986, May 4, 1986, and June 5, 1987. The envelopes postmarked October 5, 1981, September 6, 1982, July 3, 1983, August 8, 1983, May 2, 1984, June 2, 1984, April 1, 1985, April 8, 1986, and June 5, 1987 all bear Ecuadorian postage stamps and were represented as having been mailed to the applicant from Ecuador at addresses where he claimed to have resided in the United States as of the date of these respective postmarks. A review of the *2006 Scott Standard Postage Stamp Catalogue* Volume 2 (Scott Publishing Company 2005) reveals the following:

- The envelopes postmarked July 3, 1983 contains a stamp with a value of ten sucres that is part of a block of four postage stamps commemorating the one hundredth anniversary of the Social Services Council of Guayaquil, Ecuador. The stamp contains the upper left portion of this organization's emblem. The stamp is listed at page 874 of Volume 2 of the *2006 Scott Standard Postage Stamp Catalogue* as catalogue number [REDACTED]. The catalogue lists this stamp's date of issue as November 24, 1988.
- The envelope postmarked August 8, 1983 contains a stamp with a value of ten sucres that is part of a block of four postage stamps commemorating one hundredth anniversary of the Social Services Council of Guayaquil, Ecuador. The stamp contains the lower right portion of this organization's emblem and the Spanish phrase "DE TRADICION DE FE, AMPARO, Y ESPERANZA." The stamp is listed at page 874 of Volume 2 of the *2006 Scott Standard Postage Stamp Catalogue* as catalogue number [REDACTED]. The catalogue lists this stamp's date of issue as November 24, 1988.
- The envelope postmarked April 8, 1986 bears a postage stamp with a value of 35 sucres that commemorates the one hundred twenty-fifth anniversary of the Colegio San Gabriel. The stamp contains a portrait of the Virgin Mary in the upper left corner and a stylized illustration of the college entrance as it appeared in the nineteenth century. The stamp is listed at page 874 of Volume 2 of the *2006 Scott Standard Postage Stamp Catalogue* as catalogue number [REDACTED]. The catalogue lists this stamp's date of issue as July 25, 1988.

- The envelope postmarked June 5, 1987, bears a stamp with a value of ten sueres that commemorates the 1988 Summer Olympics in Seoul, South Korea. The stamp contains the emblem of these particular Olympics in the upper right corner and a cartoon illustration of the 1988 Summer Olympic Mascot, Hodori, the tiger running. This stamp is listed at page 875 of Volume 2 of the *2006 Scott Standard Postage Stamp Catalogue* as catalogue number [REDACTED]. The catalogue lists this stamp's date of issue as March 20, 1989.

The envelopes postmarked December 2, 1981, April 3, 1982, January 13, 1985, and May 4, 1986 all contain United States postage stamps and were purportedly mailed from within this country to the applicant at addresses where he claimed to have resided in the United States as of the date of these respective postmarks. The envelope postmarked December 2, 1981 contains a stamp with a value of eighteen cents that commemorates disabled people. A review of "Publication 100-The United States Postal Service: An American History" at <http://www.usps.com/cpim/ftp/pubs/pub100/> reveals that the United States Postal Service raised the uniform rate for domestic letters mailed in the United States from eighteen cents to twenty cents on November 1, 1981. Therefore, the eighteen cent stamp on the envelope postmarked December 2, 1981 would have been insufficient to mail this envelope on the date of this postmark. Further, a review of the *2006 Scott Standard Postage Stamp Catalogue* Volume 1 (Scott Publishing Company 2005) reveals the following:

- The envelope postmarked May 4, 1986 contains a postage stamp with a value of twenty-two cents and commemorates Black Heritage. The stamp contains a portrait of Jean Baptiste Point Du Sable, pioneer trader and founder of Chicago, Illinois. This stamp is listed at page 65 of Volume 1 of the *2006 Scott Standard Postage Stamp Catalogue* as catalogue number 2249 A1619. The catalogue lists this stamp's date of issue as February 20, 1987.

The fact that envelopes postmarked July 3, 1983, August 3, 1983, April 8, 1986, May 4, 1986, and June 5, 1987, all bear stamps that were 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. This derogatory information establishes that the applicant made material misrepresentations in asserting his claim of residence in the United States for the period in question and thus 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 and counsel on December 17, 2008 informing the parties 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 parties were granted fifteen days to provide substantial evidence to overcome, fully and persuasively, these findings.

The record shows that as of the date of this decision, neither the applicant nor counsel has submitted a response to the AAO's notice. Therefore, the record must be considered complete.

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.

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.