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U.S. Citizenship
and Immigration
Services

L1

FILE:

Office: LOS ANGELES

Date: JAN 15 2009

MSC 06 077 12246

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:

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.

A handwritten signature in black ink, appearing to read "John F. Grissom".

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 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, the applicant reiterated his claim of residence in the United States for the requisite period and asserted that he submitted sufficient evidence to establish such claim. The applicant included two new affidavits in support of his 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 USCIS on December 17, 2005.

In support of his claim of residence in the United States for the requisite period, the applicant submitted affidavits of residence, an employment affidavit, affidavits relating the applicant's absence from this country in 1987, original receipts, and original postmarked envelopes.

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 December 19, 2006.

The applicant's remarks on appeal relating to the sufficiency and quality of the evidence he 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 noted above, the applicant provided ten original envelopes postmarked December 27, 1981, April 28, 1982, March 10, 1983, May 20, 1983, March 12, 1984, September 2, 1984, February 24, 1985, September 27, 1985, September 12, 1988, and November 24, 1988, respectively, in support of his claim of residence in the United States for the requisite period. The envelopes all bear Guatemalan postage stamps and were represented as having been mailed to the applicant from Guatemala at addresses where he claimed to have resided in the United States 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 December 27, 1981 bears a postage stamp with a value of eight centavos that commemorates the two hundredth anniversary (in 1981) of the San Jose de los Infantes College. The stamp contains a portrait of the founder of this institution and the fourth archbishop of Guatemala, [REDACTED]. The stamp is listed at page 554 of Volume 3 of the *2008 Scott Standard Postage Stamp Catalogue* as catalogue number [REDACTED]. The catalogue lists this stamp's date of issue as June 10, 1987.
- The envelope postmarked April 28, 1982 bears a stamp with a value of fifty centavos that commemorates the Nineteenth National Folklore Carnival of Coban, Alta Verapaz and contains the symbol of the Lions Clubs International in the lower left corner. The stamp contains a photograph of young woman weaving. This stamp is listed at page 554 of Volume 3 of the *2008 Scott Standard Postage Stamp Catalogue* as catalogue number [REDACTED]. The catalogue lists this stamp's date of issue as December 8, 1987.
- The envelope postmarked March 10, 1983 bears a postage stamp with a value of ten centavos that commemorates the two hundredth anniversary (in 1981) of the San Jose de los Infantes College and contains a picture of the college crest. The stamp is listed at page 554 of Volume 3 of the *2008 Scott Standard Postage Stamp Catalogue* as catalogue number [REDACTED]. The catalogue lists this stamp's date of issue as June 10, 1987.
- The envelope postmarked May 20, 1983, bears a stamp with a value of ten centavos that commemorates the efforts of volunteer firefighters. The stamp contains a stylized illustration of three firemen rescuing a young child and woman from the ruins of a building. This stamp is listed at page 553 of Volume 3 of the *2008 Scott Standard Postage Stamp Catalogue* as catalogue number [REDACTED]. The catalogue lists this stamp's date of issue as October 10, 1986.
- The envelope postmarked March 12, 1984 bears a postage stamp with a value of eight centavos that commemorates the National Scouting Association of Guatemala. The stamp contains a stylized illustration of a scout saluting, San

Pedro Volcano, and a marimba player. This stamp is listed at page 553 of Volume 3 of the *2008 Scott Standard Postage Stamp Catalogue* as catalogue number [REDACTED]. The catalogue lists this stamp's date of issue as July 1, 1985. The envelope also contains another different stamp with a value of eight centavos that commemorates the one hundredth anniversary (in 1984) of the independence of Quetzaltenango province in Guatemala. The stamp contains a stylized illustration of the Temple of Minerva. This stamp is listed at page 553 of Volume 3 of the *2008 Scott Standard Postage Stamp Catalogue* as catalogue number [REDACTED]. The catalogue lists this stamp's date of issue as July 16, 1986.

- The envelope postmarked September 2, 1984 bears a stamp that commemorates modern coffee production. The stamp contains a stylized illustration of a man picking coffee beans and a cup of coffee in the lower left corner. This stamp is listed at page 553 of Volume 3 of the *2008 Scott Standard Postage Stamp Catalogue* as catalogue number [REDACTED]. The catalogue lists this stamp's date of issue as December 19, 1984.
- The envelope postmarked February 24, 1985 bears a postage stamp with a value of eight centavos that commemorates the National Scouting Association of Guatemala. The stamp contains a stylized illustration of a scout saluting, San Pedro Volcano, and a marimba player. This stamp is listed at page 553 of Volume 3 of the *2008 Scott Standard Postage Stamp Catalogue* as catalogue number [REDACTED]. The catalogue lists this stamp's date of issue as July 1, 1985. The envelope also contains another different stamp with a value of nine centavos that commemorates famous writers, poets, and historians of Guatemala. The stamp contains a portrait of historian and novelist Jose Milla y Vidaurre. This stamp is listed at page 554 of Volume 3 of the *2008 Scott Standard Postage Stamp Catalogue* as catalogue number [REDACTED]. The catalogue lists this stamp's date of issue as November 5, 1987.
- The envelope postmarked September 27, 1985 bears a postage stamp with a value of twelve centavos that commemorates the Central Region for the Promotion of Literacy in Latin America and the Caribbean. The stamp contains a cartoon illustration of a boy with a hat reading a book with three flowers on each of his sides and a pillar on the boy's left. This stamp is listed at page 554 of Volume 3 of the *2008 Scott Standard Postage Stamp Catalogue* as catalogue number [REDACTED]. The catalogue lists this stamp's date of issue as August 20, 1987.

The fact that envelopes postmarked December 27, 1981, April 28, 1982, March 10, 1983, May 20, 1983, March 12, 1984, September 2, 1984, February 24, 1985, and September 27, 1985 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 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 on December 15, 2008 informing him that it was the AAO's intent to dismiss his 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 applicant was 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, the applicant has failed to submit 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 envelopes 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.