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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

Office: SAN DIEGO

Date: JUL 01 2009

MSC 06 017 10061

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, San Diego, 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, the applicant reiterated her claim of residence in the United States for the requisite period and asserted that she 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 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 October 17, 2005.

In support of her claim of residence in the United States for the requisite period, the applicant submitted affidavits of residence, declarations of residence, and photocopied envelopes postmarked July 28, 1982, September 27, 1983, January 9, 1985, and April 1, 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 20, 2007.

The applicant’s remarks on appeal relating to the sufficiency and quality of the evidence she 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 documentation

including photocopied envelopes postmarked July 28, 1982, September 27, 1983, January 9, 1985, and April 1, 1986. These envelopes contain Mexican postage stamps and were represented as having been mailed from Mexico to the applicant at an address in this country that she claimed as her residence in this country as of the date of these respective postmarks. A review of the *2009 Scott Standard Postage Stamp Catalogue Volume 4* (Scott Publishing Company 2008) reveals the following:

- The envelopes postmarked July 28, 1982 bears two of the same stamp each with a value of four pesos that commemorates the 2nd United Nations Conference on Peaceful Uses of Outer Space in Vienna, Austria from August 9, 1982 to August 21, 1982. This stamp contains from right to left stylized illustrations of space satellite, two doves, the earth, a broadcast antenna, a ship, a jet plane, the sun, a corn stalk, and a space shuttle. This stamp is listed at page 912 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 August 14, 1982.
- The envelope postmarked January 9, 1985 bears a stamp with a value of eighty pesos. This stamp contains a stylized illustration of overalls, the Spanish word for mixed cloth "mezcualla," 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 1986.
- The envelope postmarked April 1, 1986 bears a stamp with a value of twenty pesos. The stamp contains a stylized illustration of a bicycle, the Spanish word for bicycles "bicicletas," 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 fact that envelopes postmarked July 28, 1982, January 9, 1985, and April 1, 1986 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 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 on April 7, 2009, informing her that it was the AAO's intent to dismiss her 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 her 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.

In response, counsel submits a statement in which she asserts that the postage stamps in question were actually issued prior to the issue dates listed in Volume 4 of the *2009 Scott Standard Postage Stamp Catalogue*. Counsel contends that the postage stamps in the "Exporta" series were issued between the years 1985 and 1988 and any particular stamp in this series could have been issued as early as 1985 and reissued in subsequent years up through 1988, rather than the specific date of issue listed in Volume 4 of the *2009 Scott Standard Postage Stamp Catalogue*. However, a review of Volume 4 of the *2009 Scott Standard Postage Stamp Catalogue* reveals 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 [REDACTED] through [REDACTED], page 909 with catalog numbers [REDACTED] through [REDACTED]; page 917 with catalog numbers [REDACTED] through [REDACTED]; page 918 with catalog numbers [REDACTED] through [REDACTED]; page 920 with catalog numbers 1583 through 1603; and, page 926 with catalog numbers [REDACTED] through [REDACTED]. 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 958 with catalog numbers [REDACTED] through [REDACTED] and, page 961 with catalog numbers [REDACTED] through [REDACTED]. Once again, it must be reiterated that the "mezcolla" stamp with a value of eighty pesos on the envelope postmarked January 9, 1985 is listed at page 917 of Volume 4 of the *2009 Scott Standard Postage Stamp Catalogue* as catalogue number [REDACTED] with an issue date of 1986. Furthermore, it must be reiterated that the "bicicletas" stamp with a value of twenty pesos on the envelope postmarked April 1, 1986 is listed at page 918 of Volume 4 of the *2009 Scott Standard Postage Stamp Catalogue* as catalogue number [REDACTED] with an issue date of 1987.

Counsel claims that the proximity between the date of the postmark July 28, 1982 on the envelope submitted by the applicant and the issue date of August 14, 1982 listed for the stamp with a value of four pesos that commemorates the 2nd United Nations Conference on Peaceful Uses of Outer Space in Vienna listed at page 912 of Volume 4 of the *2009 Scott Standard Postage Stamp Catalogue* as catalogue number [REDACTED] suggests that the stamp was available prior to this formal date of issue. Counsel states, "The proximity is just too close to be a coincidence." Nevertheless, counsel submits a photocopied page from the internet website at http://galeon.com/timbresdemexico/1982/1982_13.htm that reflects the stamp with a value of

four pesos commemorating the 2nd United Nations Conference on Peaceful Uses of Outer Space in Vienna listed at page 912 of Volume 4 of the *2009 Scott Standard Postage Stamp Catalogue* as catalogue number [REDACTED] was first issued on August 14, 1982. The fact that counsel herself has provided other independent evidence that confirms that this stamp's date of issue was August 14, 1982 eliminates any chance of coincidence.¹

In support of her assertions and contentions, counsel submits an affidavit dated April 21, 2009 that is signed by [REDACTED] and accompanied by a certified translation. Counsel includes copies of the envelopes in question, [REDACTED] "Credencial Para Votar" (voting card), and [REDACTED] identification card for 2004 to 2007 from Sindicato Nacional De Trabajadores Servicio Postal Mexicano (reflecting his membership in the National Syndicate of Mexican Postal Service Workers). In his affidavit, [REDACTED] states that he was a postal worker in the Valle de Santiago, Guanajuato, Mexico office of the Mexican Postal Service in the years 1982 to 1986. [REDACTED] declares that he was working in this office in 1982, 1985, and 1986 and that the stamps contained on the envelopes postmarked July 28, 1982, January 9, 1985, and April 1, 1986 correspond to the year of each respective postmark, and that the postmarks on these envelopes are accurate. Regardless, [REDACTED] admits in his affidavit that he is forty-one years old as of the date he executed this document on April 21, 2009. This admission establishes that [REDACTED] was approximately fourteen years of age in 1982 and approximately eighteen years of age in 1986. [REDACTED] fails to provide any explanation as to how he was working for the Mexican Postal Service at such an early age in the period from 1982 to 1986, and does not specify the nature of his job and the duties this job entailed. While the identification card cited above reflects that [REDACTED] was a member of the Mexican Postal Service Workers Union in the period from 2004 to 2007, the record contains no evidence establishing that he was a postal worker in the Valle de Santiago, Guanajuato, Mexico office of the Mexican Postal Service in the years 1982 to 1986.

Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998)(citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

¹ While it is conceivable that a stamp could be issued prior to an official issue date, such an early release stamp would be easily and readily identifiable as its retail value would be substantially greater than those same stamps released on or after the official issue date. A review of both Volume 4 of the *2009 Scott Standard Postage Stamp Catalogue* and the internet website at http://galeon.com/timbresdemexico/1982/1982_13.htm reveals no evidence to establish the stamp in question, the Mexican stamp with a value of four pesos commemorating the 2nd United Nations Conference on Peaceful Uses of Outer Space in Vienna, was released early. Furthermore, counsel has failed to submit any evidence to establish that this particular stamp was released on a date prior to the official issue date of August 14, 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 in² 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.
