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U.S. Citizenship and Immigration Services
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U.S. Citizenship
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Services

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FILE:

MSC 04 349 11841

Office: NEWARK

Date:

OCT 13 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:

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.

Perry Rhew
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, Newark, New Jersey, 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 this country for the requisite period and asserted that he had provided sufficient evidence in support of such claim. The applicant included copies of previously submitted documentation in support of the appeal.

Although a Notice of Entry of Appearance as Attorney of Representative (Form G-28) has been submitted, the individual who provided this document is no longer authorized under either 8 C.F.R. §§ 292.1 or 292.2 to represent the applicant. Therefore, this decision will be furnished to the applicant only.

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 September 13, 2004.

In support of his claim of residence in the United States for the requisite period, the applicant submitted affidavits of residence, an original receipt, affidavits relating to the applicant’s absence from this country in 1987, a letter of membership, an employment letter, employment affidavits, tax documents, co-worker affidavits, and original 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 May 3, 2006.

The applicant's remarks on appeal regarding the sufficiency of 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 has been previously discussed, the applicant submitted supporting documentation including original envelopes postmarked August 19, 1981, an indeterminate day of December 1981, June 18, 1982, August 19, 1982, and September 5, 1983, respectively. These envelopes all contain Indian postage stamps and were represented as having been mailed from India to the applicant at the address in this country that he claimed as his residence as of 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 19, 1981, an indeterminate day of December 1981, June 18, 1982, and August 19, 1982, all bear at least two of the same stamp each with a value of one rupee and containing a portrait of Mahatma Gandhi. A review of the *2009 Scott Standard Postage Stamp Catalogue* reveals that similar stamps were initially issued in two different sized versions (23mm X 29mm listed at page 869 of Volume 3 of the *2009 Scott Standard Postage Stamp Catalogue* as catalogue number 676 A410 first issued in 1976 and 17mm X 20mm listed at page 869 of Volume 3 of the *2009 Scott Standard Postage Stamp Catalogue* as catalogue number 677 A410 first issued in 1978) both of which were valued at only twenty-five paise. Subsequent reissues of this type of stamp include a stamp with a value of thirty paise listed at page 875 of Volume 3 of the *2009 Scott Standard Postage Stamp Catalogue* as catalogue number 842 A410 first issued in 1980, a stamp with a value of thirty-five paise listed at page 875 of Volume 3 of the *2009 Scott Standard Postage Stamp Catalogue* as catalogue number 845 A410 first issued in 1980, a stamp with a value of fifty paise listed at page 875 of Volume 3 of the *2009 Scott Standard Postage Stamp Catalogue* as catalogue number 846B A410 first issued in 1983, and a stamp with a value of sixty paise listed at page 869 of Volume 3 of the *2009 Scott Standard Postage Stamp Catalogue* as catalogue number 681 A410 first issued in 1988. The one rupee stamp depicting Mahatma Gandhi that is on the original envelopes submitted by the applicant in support of his claim of residence in this country for the requisite period is listed at page 877 of Volume 3 of the *2009 Scott Standard Postage Stamp Catalogue* as catalogue number 916 A410. This one rupee stamp depicting Mahatma Gandhi was issued on January 30, 1991.

- The envelope postmarked on an indeterminate day in December 1981 contains a stamp that is valued at fifty paise, commemorates the Indian dairy industry, and depicts a woman carrying a jar on her head, dairy cows, and milk containers. This stamp is listed at page 877 of Volume 3 of the *2009 Scott Standard Postage Stamp Catalogue* as catalogue number 914 A537. The catalogue lists the date of issue for this stamp as January 25, 1982.
- The envelope postmarked September 5, 1983 contains a stamp with a value of sixty paise that bears a portrait of Mahatma Gandhi. As noted above, this stamp is listed at page 869 of Volume 3 of the *2009 Scott Standard Postage Stamp Catalogue* as catalogue number 681 A410. The catalogue lists the date of issue for this stamp as 1988.

The fact that envelopes postmarked August 19, 1981, an indeterminate day of December 1981, June 18, 1982, August 19, 1982, and September 5, 1983, all bear stamps that were not issued until well after the date of the 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 on August 5, 2009, informing the applicant 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 applicant was granted fifteen days to provide evidence to overcome, fully and persuasively, these findings.

In response, the applicant submits a statement in which he declares that the postmarked envelopes in question had been mailed from India to him in the United States on the dates of the respective postmarks and the stamps on these envelopes were not fraudulent. However, the fraud perpetrated in the instant case concerns the production and placement of fraudulent postmarks on

the envelopes in question rather than the authenticity of the actual postage stamps on these envelopes. The applicant fails to offer an explanation as to how envelopes postmarked August 19, 1981, an indeterminate day of December 1981, June 18, 1982, August 19, 1982, and September 5, 1983 all bear postage stamps that were not issued by the Indian government until after the date of these respective postmarks. Moreover, it was the applicant himself who included the envelopes in question with the initial Form I-687 application as evidence of his residence in this country for the requisite period. Without independent evidence to corroborate the applicant's claims, these statements cannot be considered as persuasive. 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)).

The applicant also request an extension to obtain evidence addressing the derogatory information contained in the AAO's notice dated August 5, 2009. However, the record shows that as of the date of this decision, the applicant has failed to submit any additional material to supplement his initial 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 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 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.