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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
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FILE: [REDACTED] Office: NEW YORK
MSC 06 097 10882

Date: OCT 27 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.

ON 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.

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, 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 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 based this determination on the applicant's testimony she had resided in Venezuela from her birth in June 1963 to November 1991 in a Form I-589, Request for Asylum in the United States, and a Form G-325, Report of Biographic Information. 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 claimed the applicant never filed the asylum application cited by the director.

Subsequent to the filing of the appeal, counsel submitted a letter on the applicant's behalf to the AAO on September 16, 2009 requesting that her Form I-687 application and corresponding appeal be withdrawn. Although this request to withdraw the appeal shall be honored, the following facts must be noted.

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.

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 January 5, 2006. In support of her claim of continuous unlawful residence in the United States since prior to January 1, 1982, the applicant submitted documentation including original envelopes postmarked December 13, 1981, December 18, 1984, February 4, 1985, and March 10, 1986, respectively. These envelopes contain Dominican postage stamps and were represented as having been mailed from the Dominican Republic to you at the address in this country that you claimed as your sole residence during the requisite period. A review of the *2009 Scott Standard Postage Stamp Catalogue* Volume 2 (Scott Publishing Company 2008) reveals the following:

- The envelopes postmarked December 18, 1984 bears a postage stamp with a value of five centavos that commemorates edible plants. This stamp contains a stylized illustration of Sorghum plants. This stamp is listed at page 876 of Volume 2 of the *2009 Scott Standard Postage Stamp Catalogue* as catalogue number 997 A360. The catalogue lists this stamp's date of issue as August 21, 1987.
- The envelopes postmarked March 10, 1986 bears a postage stamp with a value of twenty-five centavos that commemorates edible plants. This stamp contains a stylized illustration of an Araru plant, *Martanta arundinacea*. This stamp is listed at page 876 of Volume 2 of the *2009 Scott Standard Postage Stamp Catalogue* as catalogue number 998 A360. The catalogue lists this stamp's date of issue as August 21, 1987.

The fact that original envelopes postmarked December 18, 1984 and March 10, 1986 both bear stamps that were not issued until well after the date of these 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. By engaging in such action, the applicant negated her own credibility as well as the credibility of her claim of continuous residence in this country for the period from prior to January 1, 1982.

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 application. 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).

By filing the instant application and submitting falsified documents, the applicant has sought to procure a benefit provided under the Act through fraud and willful misrepresentation of a material fact. 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. Consequently, the applicant is ineligible to adjust to temporary permanent residence under section 245A of the Act and the terms of the CSS/Newman Settlement Agreements on this basis.

ORDER: The appeal is dismissed based upon its withdrawal. This decision constitutes a final notice of eligibility.