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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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FILE: [REDACTED] Office: BOSTON  
MSC 06 082 16699

Date: SEP 08 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, Boston, Massachusetts, 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 this country for the requisite period and asserted that the applicant had provided sufficient evidence in support of such claim. Counsel included copies of previously submitted documentation in support of the 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 21, 2005.

In support of his claim of residence in the United States for the requisite period, the applicant submitted affidavits of residence, original receipts, an affidavit relating to the applicant’s absence from this country in 1987, 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 April 30, 2007.

Counsel’s remarks on appeal regarding the sufficiency of evidence submitted in support of the applicant’s 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 an indeterminate day of October 1981, an indeterminate day of September 1983, an indeterminate day and month in 1985, an indeterminate day and month in 1985, and an indeterminate day of March 1987, respectively. The envelopes postmarked on an indeterminate day of October 1981, an indeterminate day of September 1983, and an indeterminate day of March 1987 bear Cameroonian postage stamps and were represented as having been mailed from Yaunde, Cameroon to the applicant at addresses in this country. Both envelopes postmarked on indeterminate days and months in 1985 bear Sierra Leonean postage stamps and were represented as having been mailed from Sierra Leone to the applicant at an address in the United States. A review of the *2009 Scott Standard Postage Stamp Catalogue Volumes 2 and 5* (Scott Publishing Company 2008) reveals the following:

- The envelope postmarked an indeterminate day of October 1981 bears a Cameroonian stamp with a value of seventy francs that commemorates Insects Destructive to Agriculture. This stamp contains a stylized illustration of a species of coffee bug, *Antestiopsis lineaticollis* intricate, imposed over the berries and leaves of a coffee plant. The stamp is listed at page 40 of Volume 2 of the *2009 Scott Standard Postage Stamp Catalogue* as catalogue number 836 A251. The catalogue lists this stamp's date of issue as September 25, 1987.
- The envelope postmarked an indeterminate day of September 1983 bears a Cameroonian stamp with a value of one hundred fifty francs that commemorates the Maroua Agricultural Show. This stamp contains a stylized illustration of long horned cattle in a field. The stamp is listed at page 40 of Volume 2 of the *2009 Scott Standard Postage Stamp Catalogue* as catalogue number 842 A253. The catalogue lists this stamp's date of issue as January 6, 1988.
- One of the envelopes postmarked on an indeterminate day and month in 1985 bears two of the same Sierra Leonean stamp each with a value of ten leone. This stamp contains a stylized illustration of a species of butterfly, Small-striped swordtail, imposed over flowers. The stamp is listed at page 1111 of Volume 5 of the *2009 Scott Standard Postage Stamp Catalogue* as catalogue number 866 A126. The catalogue lists this stamp's date of issue as August 4, 1987. This envelope also contains a Sierra Leonean stamp with a value of three leone that contains a stylized illustration of a species of butterfly, *Acraea swallowtail* imposed over water. This stamp is listed at page 1115 of Volume 5 of the *2009 Scott Standard Postage Stamp Catalogue* as catalogue number 1257 A126. The catalogue lists this stamp's date of issue as 1990.
- The remaining envelope postmarked on an indeterminate day and month in 1985 bears two of the same Sierra Leonean stamp each with a value of thirty leone. This stamp contains a stylized illustration of a species of butterfly, Black and

yellow swallowtail, imposed over a flower. The stamp is listed at page 1111 of Volume 5 of the *2009 Scott Standard Postage Stamp Catalogue* as catalogue number 869 A126. The catalogue lists this stamp's date of issue as August 4, 1987.

- The envelope postmarked an indeterminate day of March 1987 bears a Cameroonian stamp with a value of seventy francs that commemorates the Maroua Agricultural Show. This stamp contains a stylized illustration of millet plants. The stamp is listed at page 40 of Volume 2 of the *2009 Scott Standard Postage Stamp Catalogue* as catalogue number 840 A253. The catalogue lists this stamp's date of issue as January 6, 1988.

The fact that original envelopes postmarked an indeterminate day of October 1981, an indeterminate day of September 1983, an indeterminate day and month in 1985, an indeterminate day and month in 1985, and an indeterminate day of March 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 June 24, 2009, informing the parties that it was the AAO's intent to dismiss the applicant's 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 evidence to overcome, fully and persuasively, these findings.

In response, counsel requested that he be provided with the postmarked envelopes cited above and an extension of fifteen days to submit a response once the envelopes in question had been received. However, the pertinent regulation at 8 C.F.R. § 103.2(b)(16) states the following:

Inspection of evidence. An applicant or petitioner shall be permitted to inspect the record of proceeding which constitutes the basis for the decision, except as provided in the following paragraphs.

(i) Derogatory information unknown to petitioner or applicant. If the decision will be adverse to the applicant or petitioner and is based on derogatory information considered by the Service and of which the applicant or petitioner is unaware, he/she shall be advised of this fact and offered an opportunity to rebut the information and present information in his/her own behalf before the decision is rendered, except as provided in paragraphs (b)(16)(ii), (iii), and (iv) of this section. Any explanation, rebuttal, or information presented by or in behalf of the applicant or petitioner shall be included in the record of proceeding.

(ii) Determination of statutory eligibility. A determination of statutory eligibility shall be based only on information contained in the record of proceeding which is disclosed to the applicant or petitioner, except as provided in paragraph (b)(16)(iv) of this section.

(iii) Discretionary determination. Where an application may be granted or denied in the exercise of discretion, the decision to exercise discretion favorably or unfavorably may be based in whole or in part on classified information not contained in the record and not made available to the applicant, provided the regional commissioner has determined that such information is relevant and is classified under Executive Order No. 12356 (47 FR 14874; April 6, 1982) as requiring protection from unauthorized disclosure in the interest of national security.

(iv) Classified information. An applicant or petitioner shall not be provided any information contained in the record or outside the record which is classified under Executive Order No. 12356 (47 FR 14874; April 6, 1982) as requiring protection from unauthorized disclosure in the interest of national security, unless the classifying authority has agreed in writing to such disclosure. Whenever he/she believes he/she can do so consistently with safeguarding both the information and its source, the regional commissioner should direct that the applicant or petitioner be given notice of the general nature of the information and an opportunity to offer opposing evidence. The regional

commissioner's authorization to use such classified information shall be made a part of the record. A decision based in whole or in part on such classified information shall state that the information is material to the decision.

Clearly, the language of the regulation does not mandate that the Service or its successor USCIS provide an applicant or petitioner with a copy of a document containing derogatory information used to deny an application or petition. Rather, the regulation requires that an applicant or petitioner be advised of such derogatory information and offered an opportunity to rebut the information and present information in his or her own behalf before the decision is rendered. This is the procedure that has been utilized in the instant case as the AAO issued a notice to the parties specifically informing the applicant and counsel of the derogatory information relating to the envelopes and the corresponding page numbers and catalogue numbers of the stamps as contained in Volumes 2 and 5 of the *2009 Scott Standard Postage Stamp Catalogue*. The record shows that as of the date of this decision, neither the applicant nor counsel has submitted any additional material to supplement the response to the notice. Therefore, the record must be considered complete.

The existence of derogatory information that establishes the applicant used the postmarked envelope 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.