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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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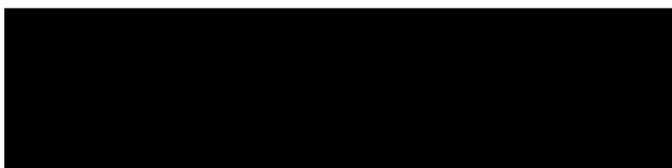
Office: LOS ANGELES

Date: **APR 05 2010**

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:



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.

Elizabeth McCormack

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 initially denied and then subsequently reopened by the Director, Los Angeles, California. The director denied the application again and the matter 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, counsel reiterated the applicant's claim of residence in this country for the required period and asserted that the applicant had submitted sufficient evidence to support 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 December 12, 2005.

In support of her claim of residence in the United States for the requisite period, the applicant submitted affidavits of residence, employment affidavits, a letter of membership, a photocopied photograph, a photocopied concert ticket, and original postmarked envelopes.

The director most recently 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 July 14, 2008.

Counsel’s remarks on appeal regarding the sufficiency of evidence submitted by the applicant to demonstrate her residence in this country during the period in question have been considered. 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 supporting documentation including original envelopes postmarked September 18, 1983 and November 28, 1986. Although the applicant also included additional original postmarked envelopes, these envelopes contain postmarks after the termination of the requisite period on May 4, 1988. The envelopes postmarked September 18, 1983 and November 28, 1986 contain Mexican postage stamps and were represented as having been mailed from Mexico to the applicant at addresses in this country. A review of the *2009 Scott Standard Postage Stamp Catalogue* Volume 4 (Scott Publishing Company 2008) reveals the following:

- The envelope postmarked September 18, 1983 contains a Mexican stamp with a value of 1600 pesos. This stamp contains a stylized illustration of red-orange and white steel pipes, the Spanish words for steel pipes "tuberia de acero," and the notation "Mexico Exporta" encircling an eagle's head in the right hand corner. This stamp, with a value of 1600 pesos, is listed in at page 920 of Volume 4 of the *2009 Scott Standard Postage Stamp Catalogue* as catalogue number 1595. The catalogue lists 1990 as the issue date for this stamp.

The fact that an envelope postmarked September 18, 1983 bears a stamp that was not issued until well after the date of this postmark establishes that the applicant utilized this document 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 and counsel February 27, 2010 informing the parties that it was the AAO's intent to dismiss the applicant's appeal based upon the fact that she utilized the postmarked envelope 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 parties were granted fifteen days to provide substantial evidence to overcome, fully and persuasively, these findings.

In response, counsel submits a statement in which she claims that the applicant was a victim of fraud perpetrated by the individual who prepared her applications for temporary residence, [REDACTED]. Counsel asserts that the postmarked envelopes cited above were submitted without the applicant's knowledge or consent. Counsel contends that the applicant filed a complaint against [REDACTED] with the Department of Consumer Affairs in Los Angeles, California in October 2008. Counsel submits copies of correspondence mailed to the applicant by the Department of Consumer Affairs in Los Angeles, California as well as receipts for certified mail.

However, a review of the record reveals that the applicant has filed two separate Form I-687 applications for temporary residence, the first filed on or about May 11, 1994 and the second filed on December 12, 2005. The Form I-687 application filed on or about May 11, 1994 contains no indication that the document was prepared by anyone other than the applicant, while the Form I-687 application filed on December 12, 2005 was prepared by an attorney in the same law firm as counsel. The record shows that [REDACTED] did prepare a Form I-485 LIFE Act application for permanent resident status on the applicant's behalf that was filed on June 22, 2001. Nevertheless, it must be noted that the notice of intent to deny issued on June 30, 2004 relating to this Form I-485 LIFE Act application specifically stated that the applicant had submitted only affidavits in support of her claim of residence for the period in question without referencing her submission of original postmarked envelopes. The fact that this notice failed to mention that original postmarked envelopes were included amongst the applicant's supporting documentation, tends to establish that the postmarked envelopes were submitted well after the Form I-485 LIFE Act application had been prepared and filed on June 22, 2001. Furthermore, the correspondence from the Department of Consumer Affairs and receipts for certified mail may very well establish that the applicant filed a complaint against [REDACTED] but do not demonstrate that the Department of Consumer Affairs made any adverse findings relating to [REDACTED]. Neither the applicant nor counsel provides any independent evidence to substantiate the claim that the applicant was a victim of fraud perpetrated by [REDACTED]. 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 assertions of counsel do not constitute evidence. *Matter of Obaighena*, 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).

The existence of derogatory information that establishes the applicant used the postmarked envelope 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 in 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 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 she submitted a falsified document, 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.