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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

L1

FILE: [redacted]
MSC 05 235 11490

Office: HOUSTON

Date: APR 0 5 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:

[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.

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 denied by the Director, Houston, Texas, 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 asserted that the applicant had no single absence from the United States in excess of forty-five days and the aggregate of his absences from this country did not exceed one hundred and eighty days during the required period. Counsel contended that the applicant returned to his unrelinquished unlawful residence in the United States after each absence.

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 May 23, 2005.

In support of his claim of residence in the United States for the requisite period, the applicant submitted affidavits of residence, an employment letter, and photocopied postmarked 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 December 20, 2007.

Counsel's remarks on appeal relating to the number and length of the applicant's absences from this country during the requisite period 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 photocopied envelopes postmarked an indeterminate day in December 1981, December 3, 1981, January 15, 1987, an indeterminate day in May 1987, and December 14, 1987, respectively. These envelopes contain Chilean postage stamps and were represented as having been mailed from Chile to the applicant at an address in this country. A review of the *2009 Scott Standard Postage Stamp Catalogue* Volume 2 (Scott Publishing Company 2008) reveals the following:

- The envelope postmarked December 3, 1981 bears a stamp with a value of eleven pesos that commemorates the 1980 Constitution of the Republic of Chile and Diego Portales. This stamp contains a stylized portrait of Diego Portales on the left and the official seal of Chile on the right. This stamp is listed at page 223 of Volume 2 of the *2009 Scott Standard Postage Stamp Catalogue* as catalogue number 617 A332. The catalogue lists this stamp's date of issue as March 11, 1982.

- The envelope postmarked January 15, 1987 bears three of the same postage stamp each with a value of twenty-five pesos that commemorates the Centennial (in 1987) of the Public Works Ministry. This stamp contains stylized illustrations of a building, roads, a dam, a railroad locomotive, and a bridge. This stamp is listed at page 227 of Volume 2 of the *2009 Scott Standard Postage Stamp Catalogue* as catalogue number 755 A409. The catalogue lists this stamp's date of issue as June 26, 1987. The envelope also bears a stamp with a value of fifteen pesos that commemorates the Chilean legend and folk tale, "La Lola." This stamp contains a stylized illustration of standing woman. This stamp is listed at page 227 of Volume 2 of the *2009 Scott Standard Postage Stamp Catalogue* as catalogue number 760d A411. The catalogue lists this stamp's date of issue as July 1987.

- The envelope postmarked an indeterminate day in May 1987 bears two of the same stamp each with a value of forty pesos that commemorates 1987 as the International Year of Shelter for the Homeless. The stamp contains a stylized illustration of a man, woman, and a child holding a drawing of a house engaged in an embrace. This stamp is listed at page 227 of Volume 2 of the *2009 Scott Standard Postage Stamp Catalogue* as catalogue number 759 A410. The catalogue lists this stamp's date of issue as August 6, 1987. The envelope also bears a stamp with a value of fifteen pesos that commemorates the Chilean legend and folk tale, "El Caleuche." This stamp contains a stylized illustration of wrecked galleon. This stamp is listed at page 227 of Volume 2 of the *2009 Scott Standard Postage Stamp Catalogue* as catalogue number 760b A411. The catalogue lists this stamp's date of issue as July 1987.

The fact that photocopied envelopes postmarked December 3, 1981, January 15, 1987, and an indeterminate day in March 1987 all bear stamps that were not issued until 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 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 February 27, 2010 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 substantial evidence to overcome, fully and persuasively, these findings.

However, the record shows that as of the date of this decision, neither the applicant nor counsel has submitted a 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 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 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.