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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

LI

[Redacted]

FILE:

[Redacted]

Office: LOS ANGELES

Date: DEC 14 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.

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The application for temporary resident status was denied by the Director, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be denied.

The director denied the application because the applicant had not appeared for the requisite interview pursuant to 8 C.F.R. § 245a.2(j).

On appeal, the applicant claimed that he had not received appointment notices for the required interview because he had moved without informing United States Citizenship and Immigration Services or USCIS (formerly the Immigration and Naturalization Service or the Service) of the change in his address of record.

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).

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 initially submitted a Form I-687, Application for Status as a Temporary Resident, to the Service on or about August 29, 1991. The record shows that the applicant subsequently submitted another separate Form I-687 application to the Service on December 11, 2001.

In support of his claim of residence in the United States for the requisite period, the applicant submitted affidavits of residence, an affidavit relating to the applicant’s purported absence from this country in 1987, an affidavit relating to the applicant’s attempt to apply for legalization in the original application period from May 5, 1987 to May 4, 1988, and photocopied envelopes.

The director determined that the applicant had not appeared for the requisite interview pursuant to 8 C.F.R. § 245a.2(j). Therefore, the director concluded that the applicant was ineligible to adjust to temporary residence and denied the Form I-687 application on November 8, 2006.

The remarks of the applicant on appeal relating to his failure to receive interview notice 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. Although five of these photocopied envelopes contain indiscernible postmarks, the remainder of the envelopes are postmarked an indeterminate day in January 1981, July 5, 1983, and November 1986, respectively. These photocopied envelopes contain Mexican postage stamps and were represented as having been mailed from Mexico to the applicant at addresses in this country he claimed as his residences during the required period. A review of the *2010 Scott Standard Postage Stamp Catalogue Volume 4* (Scott Publishing Company 2009) reveals the following:

- The photocopied envelope postmarked on an indeterminate day in January 1981 contains three of the same Mexican stamp each with a value of four hundred fifty pesos. The stamp contains a stylized illustration of a circuit board, the Spanish words for electrical components, “componentes electronicos” and the notation “Mexico Exporta” encircling an eagle’s head in the right hand corner. This stamp

is listed at page 954 of Volume 4 of the *2010 Scott Standard Postage Stamp Catalogue* as catalogue number 1585. The catalogue lists this stamp's date of issue as February 10, 1989.

- The photocopied envelope postmarked November 1, 1986 bears a Mexican stamp with a value of three hundred pesos. This stamp contains a stylized illustration of a car, a truck, and a bus, the Spanish word for automotive vehicles, "vehiculos automotores," and the notation "Mexico Exporta" encircling an eagle's head in the right hand corner. This stamp is listed at page 952 of Volume 4 of the *2010 Scott Standard Postage Stamp Catalogue* as catalogue number 1495 A320. The catalogue lists this stamp's date of issue as 1988.

The fact that photocopied envelopes postmarked on an indeterminate day in January 1981 and November 1, 1986 both bear stamps that were not issued until well 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 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).

In addition, the record contains a copy of the results of a Federal Bureau of Investigation (F.B.I.) fingerprint check dated December 23, 2003. According to this F.B.I report, the following information was discovered relating to the applicant's criminal history based upon a comparison of his fingerprints:

- Convictions under the name [REDACTED] for a violation of section 417(a) of the California Penal Code, *exhibiting a deadly weapon that was not a firearm*, and a separate violation of section 243(b) of the California Penal code, *battery upon a peace officer or emergency personnel*, in 1992 in the Los Angeles Metropolitan Municipal Court [REDACTED]

A review of the record reveals that the applicant failed to submit the official court dispositions relating the convictions noted above despite being requested to do in a notice dated January 22,

2004 by the Director, Texas Service Center. Therefore, you are being afforded a final opportunity to submit the official court dispositions for these convictions.

The AAO issued a notice to the applicant and counsel on August 17, 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 further informed that the applicant was being offered a final opportunity to submit the official court dispositions for the criminal convictions cited in the paragraph above. The parties were granted fifteen days to provide substantial evidence to overcome, fully and persuasively, these findings.

In response, the applicant submitted a statement in which he disavowed any knowledge of the postmarked envelopes in question by stating that he had never seen them before and had not provided them to anyone. The applicant claims that these photocopied envelopes were created and submitted by one of the immigration consultants, including [REDACTED] in Los Angeles, California, that had helped to prepare his Form I-687 applications. However, the applicant fails to submit any evidence to support his claim that one of the immigration consultants he had worked with fraudulently created the photocopied envelopes and submitted these documents in support of the applicant's claim of residence for the required period. While immigration consultant including [REDACTED] may very well have assisted the applicant in preparing his Form I-687 applications, the record contains no evidence reflecting that any of these immigration consultants fraudulently created documents on the applicant's or any other individual's behalf. The record contains no evidence demonstrating that [REDACTED] was ever charged with or convicted of fraudulently creating immigration documents. The applicant provides no explanation as to why any individual would create fraudulent evidence and then submit such evidence on his behalf. The applicant is the only individual who would benefit from such fraudulently created documents being accepted as credible evidence establishing his residence in this country for the requisite period. 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)). Consequently, it must be determined 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 since prior to January 1, 1982.

Counsel submitted a request for an extension to respond to the AAO notice dated August 17, 2010. The record shows that the AAO complied with this request and granted counsel an extension until October 15, 2010 to submit a response. The record further shows that rather than submitting a response by October 15, 2010 counsel submitted another request for an extension to respond to the notice that was received by the AAO on October 25, 2010. Regardless, as counsel had already been granted an extension to respond, no further extensions will be granted. 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).

Declarations by an applicant that he or she has not had a criminal record are subject to a verification of facts by Service or its successor USCIS. The applicant must agree to fully cooperate in the verification process. Failure to assist the Service or its successor USCIS in verifying information necessary for the adjudication of the application may result in a denial of the application. 8 C.F.R. § 245a.2(k)(5).

An alien is inadmissible if he or she has been convicted of a violation of, or a conspiracy to violate, any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 U.S.C. § 802). Section 212(a)(2)(A)(i)(II) of the Act, 8 U.S.C. § 1181(a)(2)(A)(i)(II). An alien is also inadmissible if the consular officers or immigration officers know or have reason to believe he or she is or has been an illicit trafficker in any such controlled substance. Section 212(a)(2)(C) of the Act.

As noted above, the applicant was convicted under the name [REDACTED] for a violation of section 417(a) of the California Penal Code, *exhibiting a deadly weapon that was not a firearm*, and a separate violation of section 243(b) of the California Penal code, *battery upon a peace officer or emergency personnel*, in 1992 in the Los Angeles Metropolitan Municipal Court [REDACTED]. The record shows that as of the date of this decision, the applicant has failed to submit the official court dispositions relating to the convictions noted above despite being requested to do so first in a notice dated January 22, 2004 from the Director, Texas Service

Center and then again in a subsequent notice issued by the AAO on August 17, 2010. Consequently, the applicant has failed to provide documents necessary for the adjudication of the application and to demonstrate that he is admissible to the United States as required pursuant to 8 C.F.R. § 245a.2(k)(5).

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. 8 C.F.R. § 245a.2(d)(5). The applicant has failed to meet this burden. By not providing necessary evidence, he has failed to establish he is admissible under the provisions of section 245A of the Act. For this additional reason, application may not be approved.

**ORDER:** The appeal is dismissed with a finding of fraud. This decision constitutes a final notice of ineligibility.