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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
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Services

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FILE:  Office: PHILADELPHIA

Date **SEP 27 2010**

IN RE: Applicant: 

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.


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, Philadelphia, Pennsylvania, 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 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 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 October 13, 2005.

In support of his claim of residence in the United States for the requisite period, the applicant submitted affidavits, photocopied pages from his Kenyan passport, a photocopied Form I-94, Departure Record, a Driving Record from the Commonwealth of Massachusetts, correspondence, original receipts, an original airline ticket, photocopied postmarked envelopes, and original 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 August 31, 2007.

Counsel's remarks on appeal regarding the sufficiency of evidence submitted by the applicant in support of his 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 in August 1981, an indeterminate day in September 1982, an indeterminate day in May 1984, an indeterminate day in June 1984, an indeterminate day in August 1984, an indeterminate day in August 1985, October 9, 1986, November 3, 1986, January 8, 1987, April 10, 1987, April 13, 1987, the sixth day of an indeterminate month in 1987, February 8, 1988, February 8, 1988, and April 15, 1988, as well as two photocopied envelopes postmarked October 21, 1981 and an indeterminate day in an indeterminate month in 1981. The original envelopes postmarked an indeterminate day in August 1981, an indeterminate day in September 1982, an indeterminate day in May 1984, an indeterminate day in June 1984, an indeterminate day in August 1984, an indeterminate day in August 1985, November 3, 1986, January 8, 1987, April 13, 1987, the sixth day of an indeterminate month in 1987 as well as the photocopied envelope postmarked an indeterminate day in an indeterminate month in 1981 all bear Kenyan postage stamps and were represented as having been mailed from Kenya to the applicant at addresses he claimed to have resided in this country during the requisite period. The photocopied envelope postmarked October 21, 1981 bears a United States postage stamp and was represented as having been mailed to the applicant at an address he claimed to have resided in this country during the requisite period. A review of the *2009 Scott Standard Postage Stamp Catalogue* Volumes 1 and 4 (Scott Publishing Company 2008) reveals the following:

- The photocopied envelope postmarked October 21, 1981 bears a United States postage stamp with a value of twenty-two cents that commemorates Seashells. This stamp contains a stylized illustration of a New England Neptune. The stamp is listed at pages 66 and 67 of Volume 1 of the *2009 Scott Standard Postage Stamp Catalogue* as catalogue number 2119 A1502. The catalogue lists this stamp's date of issue as April 4, 1985.
- The photocopied envelope postmarked on an indeterminate day and month in 1981 bears two of the same Kenyan stamp each with a value of 3.5 shillings. This stamp contains a stylized illustration of the flowers and leaves of the plant, *Ceropegia ballyana*. The stamp is listed at page 159 of Volume 4 of the *2009 Scott Standard Postage Stamp Catalogue* as catalogue number 257 A47. The catalogue lists this stamp's date of issue as February 15, 1983. This envelope also bears a stamp with a value of 7.7 shillings that commemorates National Monuments of Kenya. This stamp contains a stylized illustration of an obelisk at She Burnan Omwe, in Lamu, Kenya. The stamp is listed at page 162 of Volume 4 of the *2009 Scott Standard Postage Stamp Catalogue* as catalogue number 485 A92. The catalogue lists this stamp's date of issue as March 15, 1989.
- The original envelopes postmarked on indeterminate days in August 1981 and June 1984 both bear a Kenyan stamp with a value of seven shillings. This stamp contains a stylized illustration of the flowers and leaves of the plant, *Oncoba*

spinosa. The stamp is listed at page 160 of Volume 4 of the *2009 Scott Standard Postage Stamp Catalogue* as catalogue number 354 A47. The catalogue lists this stamp's date of issue as 1985.

- The original envelope postmarked an indeterminate day in September 1982 bears seven of the same Kenyan stamp each with a value of one shilling. This stamp contains a stylized illustration of the flowers and leaves of the plant, *Dombeya burgesiae*. The stamp is listed at page 160 of Volume 4 of the *2009 Scott Standard Postage Stamp Catalogue* as catalogue number 351 A46. The catalogue lists this stamp's date of issue as 1985.
- The original envelope postmarked an indeterminate day in May 1984 bears a Kenyan stamp with a value of four shillings. This stamp contains a stylized illustration of the flowers and leaves of the plant, *Momordica foetida*. The stamp is listed at page 160 of Volume 4 of the *2009 Scott Standard Postage Stamp Catalogue* as catalogue number 353 A47. The catalogue lists this stamp's date of issue as 1985. The envelope also bears a Kenyan stamp with a value of seven shillings that commemorates Ceremonial Costumes. The stamp contains a stylized illustration of two Taita tribesmen dressed in ceremonial costumes. The stamp is listed at page 161 of Volume 4 of the *2009 Scott Standard Postage Stamp Catalogue* as catalogue number 406 A80. The catalogue lists this stamp's date of issue as May 20, 1987.
- The original envelope postmarked an indeterminate day in August 1984 bears a Kenyan stamp with a value of one shilling. This stamp contains a stylized illustration of the flowers and leaves of the plant, *Dombeya burgesiae*. The stamp is listed at page 160 of Volume 4 of the *2009 Scott Standard Postage Stamp Catalogue* as catalogue number 351 A46. The catalogue lists this stamp's date of issue as 1985. The envelope also bears a Kenyan stamp with a value of four shillings. This stamp contains a stylized illustration of the flowers and leaves of the plant, *Momordica foetida*. The stamp is listed at page 160 of Volume 4 of the *2009 Scott Standard Postage Stamp Catalogue* as catalogue number 353 A47. The catalogue lists this stamp's date of issue as 1985.
- The original envelope postmarked an indeterminate day in August 1985 bears a Kenyan stamp with a value of three shillings that commemorates the fortieth anniversary (in 1986) of the founding of the United Nations Children's Fund (UNICEF). The stamp contains a stylized illustration of two children standing in a village and holding balloons depicting a woman breast feeding a baby, a women holding a cup as a child drinks, and a child eating beneath the UNICEF symbol. The stamp is listed at page 161 of Volume 4 of the *2009 Scott Standard Postage Stamp Catalogue* as catalogue number 394 A77. The catalogue lists this stamp's date of issue as January 6, 1987.

The fact that original envelopes postmarked an indeterminate day in August 1981, an indeterminate day in September 1982, an indeterminate day in May 1984, a determinate day in June 1984, an indeterminate day in August 1984, and an indeterminate day in August 1985, as well as photocopied envelopes postmarked October 21, 1981 and an indeterminate month in 1981 all 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 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 October 29, 2009 informing the parties that it was the AAO's intent to dismiss the applicant's appeal based upon the fact that the applicant 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.

In response, counsel submitted a statement objecting to the findings relating to the envelopes as cited within the AAO's notice of October 29, 2009. Specifically, counsel objected to the AAO's reliance upon the *Scott Standard Postage Stamp Catalogue* as a basis of authority regarding postage stamps. However, the *Scott Standard Postage Stamp Catalogue* is published by a private company, Scott Publishing Co, a subsidiary of Amos Press Inc. A review of the Amos Press Inc., internet website at <http://www.amospress.com/History.aspx> reveals the following:

In 1984 Amos Publishing became the world's largest philatelic publisher with the purchase of Scott Publishing Company. Scott is the most recognized name in stamp collecting and is both a publisher and merchandiser of stamp related products. The internationally renowned, 8-volume *Scott Standard Postage Stamp Catalogue* is produced annually to assist collectors in valuing and identifying their stamp holdings. A monthly magazine is also produced under the Scott name

which provides collectors with entertaining and informative feature articles along with the very latest new stamp issues from around the world.

While the *Scott Standard Postage Stamp Catalogue* is privately published, it is considered to be so authoritative on the subject of postage stamps and philately (stamp collecting) that the United States Postal Service has adopted the *Scott* Numbering System as its own for identification purposes of all postage stamps issued by the United States. Further, recent editions of the *Scott Standard Postage Stamp Catalogue* are maintained at the reference desks of a large number of public libraries in the United States because the catalogue is considered to be an authoritative resource source on the subject of postage stamps and philately.

Counsel also submitted a Freedom of Information Act request for a copy of the record of proceedings. The record shows that USCIS complied with counsel's request with Control Number [REDACTED] and mailed a copy of the record to counsel on February 11, 2010.

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).

Although not noted by the director, the applicant filed a Form I-690, Application for Waiver of Grounds of Excludability (now referred to as inadmissibility), noting that he believed that he was inadmissible under section 212(a)(19) of the Immigration and Nationality Act (Act) as an alien who by fraud or material misrepresentation procured admission into the United States (subsequently amended to section 212(a)(6)(C)(i) of the Act). However, the record contains no evidence or finding that the applicant committed any act that would render him inadmissible under this particular

ground. While this basis of inadmissibility is waivable, the applicant has failed to establish his eligibility for permanent resident status.

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