

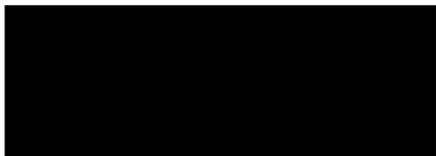
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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Date: **MAY 18 2011**

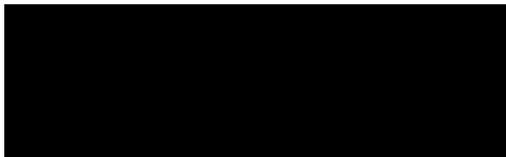
Office: HOUSTON

FILE: 

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 applicant's temporary resident status was terminated by the Director, Houston, Texas. 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 he 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. Therefore, the director concluded that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of section 245A of the Immigration and Nationality Act (Act) and terminated the applicant's temporary residence.

On appeal, counsel asserted that the applicant had submitted sufficient evidence to support his claim of residence in this country for the requisite period. Counsel contended that any discrepancies in the applicant's testimony at his interview regarding his dates of residence in the United States were the result of his nervousness. Counsel provided previously submitted documents and new documentation in support of the appeal.

The status of an alien lawfully admitted for temporary residence may be terminated at any time if it determined that the alien was ineligible for temporary residence under section 245A of the Act. 8 C.F.R. § 245a.2(u)(1)(i).

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).

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. *See* Paragraph 11, page 6 of the CSS Settlement Agreement and paragraph 11, page 10 of the Newman Settlement Agreement.

The applicant has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite period, 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.

The applicant submitted a Form I-687 application and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to USCIS on March 28, 2005.

In support of his claim of residence in the United States for the requisite period, the applicant submitted a letter from a travel agency, an affidavit relating to the applicant’s purported absence from the United States in 1987, photocopied retail receipts, a photocopied rent receipt, affidavits of residence, a letter of membership, employment letters, a letter from a leasing company and photocopied postmarked envelopes.

The record shows that the applicant was granted temporary residence on January 3, 2006.

The director determined that the applicant had provided contradictory testimony relating to his addresses of residence and dates of employment in the United States since prior to January 1, 1982. In addition, the director concluded that the supporting documents and testimony in the record could not be considered as credible because such evidence was not sufficient to corroborate the applicant’s claim of residence in the United States for the requisite period. As a result, the director found that the applicant failed to establish that he continuously resided in this country in an unlawful status for the required period. Therefore, 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 Act and terminated the applicant’s temporary resident status on May 4, 2010.

The remarks of counsel on appeal relating to the sufficiency and quality of the evidence the applicant submitted 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 photocopied envelopes postmarked February 1983 and October 1987. The envelopes bear Pakistani postage stamps and were represented as having been mailed from Karachi, Pakistan to the applicant at addresses in this country he claimed to have resided as of the date of these respective postmarks. A review of the *2010 Scott Standard Postage Stamp Catalogue Volume 5* (Scott Publishing Company 2009) reveals the following:

- The photocopied envelope postmarked October 1987 bears a stamp with a value of three rupees that commemorates the 25TH Anniversary of Pakistan Television. This stamp contains a stylized illustration of a tower surrounded by a multicolored pattern of geometric shapes and lines. The stamp is listed at page 19 of Volume 5 of the *2010 Scott Standard Postage Stamp Catalogue* as catalogue number 723 A363. The catalogue lists this stamp's date of issue as November 26, 1989.

The fact that a photocopied envelope postmarked October 1987 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 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 her 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).

On March 4, 2011, the AAO issued a notice to both the applicant and counsel advising the parties off the AAO's intent to dismiss the applicant's appeal based upon this derogatory information. The parties were granted fifteen days to provide evidence to overcome, fully and persuasively, this finding. In response, counsel requested an extension to reply to the AAO's notice. The AAO granted the applicant and counsel an extension of forty-five days to submit a response.

Counsel asserts that the AAO had violated the applicant's right to due process by not informing the applicant of the derogatory evidence noted above and not allowing the applicant the opportunity to respond. 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 regulation cited above 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 stamp on the envelope in question and the corresponding page number and catalogue number of the stamp as contained in Volume 5 of the *2010 Scott Standard Postage Stamp Catalogue* and offered the parties the opportunity to submit evidence to rebut and overcome such derogatory information.

Counsel states that the applicant's house was burglarized on March 28, 2008, and that documents which may have allowed the applicant to overcome the derogatory information relating to the envelope postmarked October 1987 had been stolen in the burglary. Counsel provides a copy of a previously submitted police report containing a detailed list of property stolen from the applicant's house including an entry for "Documents." Nevertheless, the issue of whether such stolen documents could address the derogatory information cited by the AAO can neither be confirmed nor denied and any conclusions based upon the unavailable documents would be speculative in nature.

Counsel contends that the post office in Pakistan which applied the postmark to the envelope in question may very well have made an error by using an old, out-dated stamp or seal to affix the postmark. However, counsel fails to provide any evidence to support this contention. Without independent evidence to corroborate counsel's claims, these statements cannot be considered as persuasive. 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 Obaigbena*, 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). used an

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 a falsified document, we affirm our finding of fraud. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act. As the applicant has not overcome the grounds for termination of status, the appeal must be dismissed.

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.