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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**



L1

Date: **APR 30 2012**

Office: HARTFORD

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:

SELF-REPRESENTED

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 *Northwest Immigrant Rights Project, et al vs. USCIS, et al*, 88-CV-00379 JLR (W.D. Was.) September 9, 2008, (NWIRP Settlement Agreement) and section 245A of the Immigration and Nationality Act (Act) was denied by the Director, Hartford, Connecticut, 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 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 further determined that the applicant had not demonstrated that she was a class member under the definition set forth in the NWIRP Settlement Agreement. Therefore, the director concluded that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the NWIRP Settlement Agreement and section 245A of the Act and denied the Form I-687 application.

On appeal, the applicant reiterated her claim of residence in this country for the required period. The applicant requested a second interview for both herself and her husband in order to clarify any discrepancies which had arisen regarding their respective claims of residence in the United States.

The AAO has reviewed all of the evidence, and has made a *de novo* decision based on the record and the AAO's assessment of the credibility, relevance and probative value of the evidence.¹

Class members in the NWIRP Settlement Agreement are defined, in pertinent part at pages 5, 6, and 7, as:

...all persons who entered the United States in a nonimmigrant status prior to January 1, 1982, who are otherwise *prima facie* eligible for legalization under § 245A of the INA [Immigration & Nationality Act], 8 U.S.C. § 1255a, who are within one or more of the Enumerated Categories described below in paragraph 2, and who

- (A) between May 5, 1987 and May 4, 1988, attempted to file a complete application for legalization under § 245A of the INA and fees to an INS officer or agent acting on behalf of the INS, including a Qualified Designated Agency ("QDE"), and whose applications were rejected for filing (hereinafter referred to as 'Subclass A members');
- or

¹The AAO conducts appellate review on a *de novo* basis. The AAO's *de novo* authority is well recognized by the federal courts. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

- (B) between May 5, 1987 and May 4, 1988, attempted to apply for legalization with an INS officer, or agent acting on behalf of the INS, including a QDE, under § 245A of the INA, but were advised that they were ineligible for legalization, or were refused legalization application forms, and for whom such information, or inability to obtain the required application forms, was a substantial cause of their failure to file or complete a timely written application (hereinafter referred to as 'Sub-class B' members); or
- (C) filed a legalization application under INA § 245A and fees with an INS officer or agent acting on behalf of the INS, including a QDE, and whose application
 - i. has not been finally adjudicated or whose temporary resident status has been proposed for termination (hereinafter referred to as 'Sub-class C.i. members'),
 - ii. was denied or whose temporary resident status was terminated, where the INS or CIS action or inaction was because INS or CIS believed the applicant had failed to meet the 'known to the government' requirement, or the requirement that s/he demonstrate that his/her unlawful residence was continuous (hereinafter referred to as 'Sub-class C.ii members').

2. Enumerated Categories

- (1) Persons who violated the terms of their nonimmigrant status prior to January 1, 1982 in a manner known to the government because documentation or the absence thereof (including, but not limited to, the absence of quarterly or annual address reports required on or before December 31, 1981) existed in the records of one or more government agencies which, taken as a whole, warrants a finding that the applicant was in an unlawful status prior to January 1, 1982, in a manner known to the government.
- (2) Persons who violated the terms of their nonimmigrant visas before January 1, 1982, for whom INS/DHS records for the relevant period (including required school and employer reports of status violations) are not contained in the alien's A-file, and who are unable to meet the requirements of 8 C.F.R. §§ 245a.1(d) and 245a.2(d) without such records.
- (3) Persons whose facially valid 'lawful status' on or after January 1, 1982 was obtained by fraud or mistake, whether such 'lawful status' was the result of

- (a) reinstatement to nonimmigrant status;
- (b) change of nonimmigrant status pursuant to INA § 248;
- (c) adjustment of status pursuant to INA § 245; or
- (d) grant of some other immigration benefit deemed to interrupt the continuous unlawful residence or continuous physical presence requirements of INA § 245A.

The director noted that the applicant failed to submit evidence of either her entry to the United States in a nonimmigrant status prior to January 1, 1982 or her eligibility for temporary resident status. On February 10, 2010, the director issued a Notice of Intent to Deny (NOID) and provided the applicant with an opportunity to respond to both the issue of her class membership and to provide additional evidence of her continuous residence throughout the relevant period. Because the director then adjudicated the application on the merits of the applicant's claim of residence in this country for the requisite period, the AAO retains jurisdiction over this appeal, and will adjudicate the application in accordance with the standards set forth in the settlement agreement.

The NWIRP Settlement Agreement provides that Form I-687 applications pending as of the date of the agreement shall be adjudicated in accordance with the adjudication standards described in paragraph 8B at pages 14, 15, and 16. Under those standards, the applicant must make a *prima facie* showing that prior to January 1, 1982, the applicant violated the terms of his or her nonimmigrant status in a manner known to the government because documentation or the absence thereof (including, but not limited to, the absence of quarterly or annual address reports required on or before December 31, 1981) existed in the records of one or more government agencies which, taken as a whole, warrants a finding that the applicant was in an unlawful status prior to January 1, 1982, in a manner known to the government.

It is presumed that the school or employer complied with the law and reported violations of status to the INS; the absence of such report in government records is not alone sufficient to rebut this presumption. Once the applicant makes such a showing, USCIS then has the burden of coming forward with proof to rebut the evidence that the applicant violated his or her status. If USCIS fails to carry this burden, the NWIRP Settlement Agreement stipulates at paragraph 8B that it will be found that the alien's unlawful status was known to the government as of January 1, 1982. With respect to individuals who obtained their status by fraud or mistake, the applicant bears the burden of establishing that he or she obtained lawful status by fraud or mistake. The NWIRP Settlement Agreement further stipulates that the general adjudicatory standards set forth in 8 C.F.R. § 245a.18(d) or 8 C.F.R. § 245a.2(k)(4), whichever is more favorable to the applicant, shall be followed to adjudicate the merits of the application once class membership is favorably determined.

An applicant for temporary resident status 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 Act, 8 U.S.C. § 1255a(a)(2).

The applicant must also 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, 8 U.S.C. § 1255a(a)(3). The regulations clarify that the applicant must have been physically present in the United States from November 6, 1986 until the date of filing the application. 8 C.F.R. § 245a.2(b)(1).

For purposes of establishing residence and physical presence under the NWIRP Settlement Agreement, the term “until the date of filing” in 8 C.F.R. § 245a.2(b)(1) means until the date the applicant attempted to file a completed Form I-687 application and fee or was caused not to timely file during the original legalization application period of May 5, 1987 to May 4, 1988.

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).

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 record shows that the applicant submitted a Form I-687 application and a Form I-687 Supplement, NWIRP Class Membership Worksheet, to USCIS on October 13, 2009. In support of his claim of residence in the United States for the requisite period, the applicant submitted a photocopied airline ticket and baggage check, a photocopy of her uncle’s state of New York Driver’s License, and photocopies of postmarked envelopes.

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 photocopied envelopes postmarked March 25, 1982, December 17, 1982, June 6, 1983, March 28, 1984, October 15, 1985, September 23, 1987, and August 26, 1988. These photocopied envelopes contain Brazilian postage stamps and were represented as having been mailed from Juiz De Fora, Brazil to the applicant at the address in this country she claimed to have resided as of the date of these respective postmarks. A review of the *2010 Scott Standard Postage Stamp Catalogue* Volume 1 (Scott Publishing Company 2009), reveals the following regarding the Brazilian postage stamps affixed to these envelopes:

- The photocopied envelopes postmarked December 17, 1982, June 6, 1983, and March 28, 1984, all contain a Brazilian stamp that has no listed value. The stamp contains the notation "BRASIL" at top, over a stylized illustration of a waving Brazilian flag, over the notation "TARIFA POSTAL NACIONAL," over the notations "1e PORTE" in the lower left corner and "SERIE A" in the lower right corner. This stamp is listed at page 1091 of Volume 1 of the *2010 Scott Standard Postage Stamp Catalogue* as catalogue number 2320 A1241 A. The catalogue notes that this stamp met the first class domestic postage rate and lists this stamp's date of issue as June 10, 1991.
- The photocopied envelope postmarked August 26, 1988 contains a Brazilian stamp with a value of five centavos that contains a stylized illustration of the bird species, *Turdus rufiventris*, perched on a tree branch. A review of the *2010 Scott Standard Postage Stamp Catalogue* reveals that a similar stamp was initially issued with a value of fifty cruzados and is listed at page 1095 of Volume 1 of the *2010 Scott Standard Postage Stamp Catalogue* as catalogue number 2445 A1318 with date of issue on March 1, 1994. The five centavo stamp depicting the bird species, *Turdus rufiventris*, that is on the photocopied envelope postmarked August 26, 1988 submitted by the applicant in support of her claim of residence in this country is listed at page 1096 of Volume 1 of the *2010 Scott Standard Postage Stamp Catalogue* as catalogue number 2486 A1318. This five centavo stamp depicting the bird species, *Turdus rufiventris*, was subsequently issued on in July 1, 1994.

The fact that photocopied envelopes postmarked December 17, 1982, June 6, 1983, March 28, 1984, and August 26, 1988, all bear postage 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 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 NWIRP Settlement Agreement 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).

In a notice dated March 5, 2012, the AAO informed the applicant that it was the AAO's intent to dismiss her appeal based upon the fact that she utilized the postmarked envelopes 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 applicant was granted twenty-one days to provide substantial evidence to overcome, fully and persuasively, these findings. However, the record shows that as of the date of this decision, the applicant has failed to submit a response to the notice. 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 her 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 she has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through the time she 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 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.