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: DEC 3 1 2012 Office: WEST PALM BEACH 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.

Ron Rosenberg
Acting 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, West Palm Beach, Florida, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director erroneously denied the I-687 application, finding that the applicant abandoned the application, pursuant to 8 C.F.R. § 103.2(b)(13), by failing to appear for a scheduled interview on October 30, 2006.[1] Because the director erred in denying the application based on abandonment, the director of the National Benefits Center issued a notice withdrawing the previous denial and advising the applicant of the right to appeal to the AAO on September 29, 2010. The matter is now before the AAO on appeal.

On appeal, counsel asserted that the applicant provided documentation demonstrating his inability to appear for the scheduled interview and that he should be allowed another opportunity to be interviewed.

The record reflects that the applicant subsequently requested a copy of the record of proceedings pursuant to the Freedom of Information Act. The record shows that United States Citizenship and Immigration Service (USCIS) complied with the applicant's request with Control Number and mailed a copy of the record to the applicant on June 28, 2012.

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.[2]

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).

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[1] On December 14, 2009, the United States District Court for the Eastern District of California ruled that United States Citizenship and Immigration Services (USCIS) may not apply its abandonment regulation, 8 C.F.R. § 103.2(b)(13), in adjudicating legalization applications filed by CSS class members. *See CSS v. Michael Chertoff,* Case 2:86-cv-01343-LKK-JFM.

[2] The 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).

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 August 12, 2005.

In support of his claim of residence in the United States for the requisite period, the applicant submitted affidavits of residence, affidavits relating to the applicant's purported absence from the United States in 1987, photocopied receipts, and two photocopied postmarked envelopes.

The record shows that on December 5, 2011, the AAO issued a Request for Evidence (RFE) to the applicant and counsel requesting the applicant provide the original copies of the two photocopied postmarked envelopes that the applicant had submitted in support of his claim of residence in this country for the requisite period. The applicant responded by providing the two original 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 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 April 4, 1980 and June 17, 1980. These envelopes contain Pakistani postage stamps and were represented as having been mailed from Pakistan at the address he claimed as his residence in this country as of the date of these postmarks. A review of the *2010 Scott Standard Postage Stamp Catalogue* Volume 5 (Scott Publishing Company 2009), reveals the following regarding the Pakistani postage stamps affixed to the envelope:

- The original envelopes postmarked April 4, 1980 and June 17, 1980, both bear two of the same stamp, each with a value of fifty paisa. This stamp contains a stylized illustration of the Hyderabad Fort in Pakistan. This stamp is listed at page 15 of Volume 5 of the *2010 Scott Standard Postage Stamp Catalogue* with catalogue number 617 A289. The catalogue lists this stamp's date of issue as 1986.

The fact that original envelopes postmarked April 4, 1980 and June 17, 1980 both bear a postage stamp that was not issued until well after the date of this postmark 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).

In a notice dated September 7, 2012, the AAO informed the applicant and counsel 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 applicant and counsel were granted twenty-one days to provide substantial evidence to overcome, fully and persuasively, these findings.

In response, counsel submits a statement in which he claimed that he called the publisher of the Scott Standard Postage Stamp Catalogue at 1-800-572-6885 on September 26, 2012, and that he spoke to a [redacted] in the Editing Department. [redacted] purportedly stated the following in pertinent part regarding the stamp in question depicting Fort Hyderabad in Pakistan:

1. could very likely have existed in 1980;
2. may very likely have been in circulation in 1980 due to the simple fact that Scott Standard Postage Stamp Catalogue "...is not fool proof..."; meaning that mistakes regarding dates/circulation of stamps do occur; because Scott Standard Postage Stamp Catalogue may not be 100% complete and it may not be 100% accurate, especially with regards to foreign stamps like those of Pakistan; and
3. that it is conceivable the subject matter stamp in this case (Hyderabad Fort in Pakistan) was in circulation in 1980.

Counsel further stated that [redacted] also informed him that:

> ...the reference volume and page number (Volume 5, page 15) must be incorrect due to the fact that the stamps of Pakistan are featured in page numbers ranging in the 400's. In other words the page number stated in AAO's Notice/Letter (page 15) is about 385 pages away from the beginning of Pakistan's stamps.

Nevertheless, counsel fails to provide any evidence to corroborate his claim that he made such a call much less that the any individual to whom he may have spoken conveyed the information noted above regarding the stamp in question or the *Scott Standard Postage Stamp Catalogue*. 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 unsupported 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).

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.

Every volume of each annual edition of the *Scott Standard Postage Stamp Catalogue* contains an introduction, which includes the heading, "Catalogue Listing Policy," describing the criteria and standards which must be met for a stamp to be listed in the catalogue, those cases in which a stamp will be listed with a footnote describing unusual circumstances relating to the issuing of that particular stamp, and the reasons why some stamps are not listed in the catalogue. Although the editors of the *Scott Standard Postage Stamp Catalogue* acknowledge that it is unable to determine the exact date of issue for some stamps, A review of the listings for stamps contained in the *Scott Standard Postage Stamp Catalogue* demonstrates that the editors list "No release date" for those stamps where no information is available relating to the official date of issue, the year of release if the month of the official date of issue cannot be determined, and year and month of release if the official date of issue cannot be determined to the exact day. In this case, the *2010 Scott Standard Postage Stamp Catalogue* lists only the year 1986 for the official date of issue for the Pakistani stamp contained on the postmarked envelopes cited above and does not contain any footnote indicating such stamp was available prior to the official date of issue. Furthermore, the editors of the *Scott Standard Postage Stamp Catalogue* correct and update any past inaccuracies or discrepancies by including a specific section at the end of each volume of the catalogue listing each and every addition, deletion, and change in information relating to any stamp in that volume that may have been printed in previous annual editions. Finally, a review of the website at http://www.pakistanphilately.com reveals that the date of issue listed on this

website for the Pakistani stamp valued at fifty paisa depicting Fort Hyderabad in Pakistan is April 10, 1986.

Finally, a review of Volume 5 of *Scott Standard Postage Stamp Catalogue* from the 2000 edition through the 2012 edition reveals that each edition of Volume 5 listed countries of the world beginning with the letter "P," Pakistan was the first country listed in Volume 5 of the *Scott Standard Postage Stamp Catalogue,* and the stamps of Pakistan in Volume 5 were listed beginning at page 1 in all editions in this period. The 2013 edition of Volume 5 of the *Scott Standard Postage Stamp Catalogue* was the first edition to list countries of the world beginning with the letter "N," the first edition of Volume 5 to list Namibia as the first country, and the first edition of Volume 5 to list the stamps of Pakistan in the range of pages numbered above 400.

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).

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