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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**

[REDACTED]

L1

Date: **FEB 24 2012**

Office: LOS ANGELES

FILE: [REDACTED]

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:

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.

A handwritten signature in dark ink, appearing to read "Perry Rhew".

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, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director erroneously denied the Form 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 27, 2006.¹ Because the director erred in denying the application based on abandonment, on October 6, 2010, 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. The matter is now before the AAO on appeal.

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).

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.

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.

²The 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).

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 United States Citizenship and Immigration Services (USCIS) (formerly the Immigration and Naturalization Service or the Service) on November 18, 2006.

In support of his claim of residence in the United States for the requisite period, the applicant submitted affidavits of residence, an employment affidavit, photocopied receipts for registered mail, photocopied statements of earnings and deductions, a photocopied retail receipt, an

affidavit relating to the applicant's purported absence from this country in 1988, and photocopied 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 photocopied envelopes postmarked April 22, 1982, December 14, 1982, an indeterminate date in December 1982, April 17, 1983, and April 22, 1983. Although the applicant submitted additional photocopied envelopes in support of his claim of residence, these additional photocopied envelopes contain either an indiscernible postmark, postal meter marks, or are postmarked subsequent to the termination of the requisite period. The photocopied envelopes postmarked April 22, 1982, April 17, 1983 and April 22, 1983 contain Mexican postage stamps and were represented as having been mailed from Mexico to the applicant at addresses in this country. A review of the *2010 Scott Standard Postage Stamp Catalogue Volume 5* (Scott Publishing Company 2009), reveals the following regarding the Mexican postage stamps affixed to these envelopes:

- The photocopied envelopes postmarked April 22, 1982, April 17, 1983 and April 22, 1983, all contain the same Mexican stamp with a value of twenty pesos. The stamp contains a stylized illustration of a bicycle, the Spanish word for bicycles "bicicletas," and the notation "Mexico Exporta" encircling an eagle's head in the right hand corner. This stamp is listed at page 952 of Volume 5 of the *2010 Scott Standard Postage Stamp Catalogue* as catalogue number 1492 A320. The catalogue lists this stamp's date of issue as 1987.

The photocopied envelopes postmarked December 14, 1982 and an indeterminate date in December 1982 contain United States postage stamps and were represented as having been mailed by the applicant from a return address in this country to Mexico. A review of the *2010 Scott Standard Postage Stamp Catalogue Volume 1* (Scott Publishing Company 2009), reveals the following regarding the United States postage stamps affixed to these envelopes:

- The photocopied envelope postmarked December 14, 1982, contains two of the same United States stamp each with a value of twenty-nine cents. It must be noted that this photocopied envelope is a black and white copy of the original envelope rather than a color copy. This stamp is part of series of stamps commemorating American flora and fauna and contains a stylized illustration of the head of a wood duck. This stamp was issued in two different versions; one version with the head of the wood duck illustrated in black and various multi-colors and the other version with the head of the wood duck illustrated in red and various multi-colors. The version of the stamp illustrated in black and various multi-colors is listed at page 74 of Volume 1 of the *2010 Scott Standard Postage Stamp Catalogue* as catalogue number 2484 A1848, while the version of the stamp illustrated in red and various multi-colors is listed at page 74 of Volume 1 of the *2010 Scott*

Standard Postage Stamp Catalogue as catalogue number [REDACTED]. The catalogue lists both of this stamp's two different versions date of issue as April 12, 1991.

- The photocopied envelope postmarked an indeterminate date in December 1982, contains a United States postage stamp with a value of twenty-nine cents. The stamp contains a stylized illustration of an American flag flying over the White House. This stamp is listed at page 79 of Volume 1 of the *2010 Scott Standard Postage Stamp Catalogue* as catalogue number 2609 A1961. The catalogue lists this stamp's date of issue as April 23, 1992.

The fact that photocopied envelopes postmarked April 22, 1982, December 14, 1982, an indeterminate date in December 1982, April 17, 1983, and April 22, 1983, 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 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 January 11, 2012, the AAO informed the applicant that it was the AAO's intent to dismiss his 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 was granted twenty-one days to provide substantial evidence to overcome, fully and persuasively, these findings. However, 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 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).

In addition, it must be noted that the record contains court documents from the Superior Court of California County of Los Angeles reflecting that the applicant entered a plea of nolo contendere and was convicted for a felony violation of § 1871.4(A)(1), Preparing a Fraudulent Document, of the California Insurance Code on June 16, 2000.

The regulation at 8 C.F.R. § 245a.2(c) provides a listing of aliens ineligible to adjust to temporary residence including any alien who has been convicted of a felony or three or more misdemeanors. 8 C.F.R. § 245a.2(c)(1) ; *see also* section 245A(a)(4)(B) of the Act.

The fact that the applicant has been convicted of a felony renders him ineligible to adjust to temporary resident status under section 245A of the Act on this basis as well.

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