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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]

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Date: **JUN 05 2012**

Office: LOS ANGELES

FILE: [redacted]
[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:

[redacted]

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 status as a 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 terminated by the Director, Los Angeles, California. The matter is now before the Administrative Appeals Office (AAO) on appeal.¹ 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. 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.

During the adjudication of the appeal, the AAO discovered derogatory information regarding postmarked envelopes that the applicant had submitted as evidence supporting his claim of residence in the United States for the period in question. On May 1, 2012, 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 twenty-one days to provide evidence to overcome, fully and persuasively, this finding.

In response, counsel submits a letter and supporting documentation to the AAO on May 21, 2012. In his letter, counsel requested on the applicant's behalf that his appeal be withdrawn. Although this request to withdraw the appeal shall be honored, the following facts must be noted.

¹ The record shows that director initially rejected the Form I-694, Notice of Appeal, because counsel failed to list either the applicant's A-number or the receipt number associated with the decision being appealed on the Form I-694. The director returned the appeal to counsel on July 18, 2008. Counsel resubmitted the appeal noting that the applicant's A-number had been listed on the Form G-28, Notice of Entry of Appearance as Attorney or Representative, which was included with the appeal. The director subsequently rejected the appeal as untimely filed. The director's rejection of the appeal is withdrawn, the appeal shall be considered as timely filed, and the AAO will continue the adjudication of the 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

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).

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.

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).

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 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 December 13, 2004.

In support of his claim of residence in the United States for the requisite period, the applicant submitted affidavits of residence, a photocopied receipt from the California Department of Motor Vehicles, letters of employment, a letter of membership, photocopies photographs, and photocopies of postmarked envelopes.

The director subsequently approved the applicant’s Form I-687 application for temporary residence on July 21, 2005.

The director determined that the applicant had provided contradictory testimony relating to the dates of his entrances into and exits from the United States during the requisite period. 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 June 13, 2008.

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, as previously noted, 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. The applicant submitted supporting documentation including photocopied envelopes postmarked October 30, 1985, November 30, 1985, November 25, 1986, August 29, 1987, and November 25, 1987. Although the applicant provided additional photocopied envelopes as supporting evidence, these additional envelopes contain either an indiscernible postmark or a postmark dated subsequent to the termination of the requisite period. The envelopes containing discernible postmarks bear Mexican postage stamps and were represented as having been mailed from Mexico to the applicant at the address in this country he claimed to have resided for the entire requisite period. A review of the *2010 Scott Standard Postage Stamp Catalogue* Volume 4 (Scott Publishing Company 2009) reveals the following:

- The photocopied envelopes postmarked October 30, 1985 and November 30, 1985 both contain the same Mexican stamp with a value of 1,500 pesos. This stamp contains a stylized illustration of a copper vase, the Spanish words for hammered copper, "cobre martillado," and the notation "Mexico Exporta" encircling an eagle's head in the right hand corner. A review of Volume 4 of the *2010 Scott Standard Postage Stamp Catalogue* reveals that this stamp is listed at page 954 as catalogue number 1594. The catalogue lists the date of issue for the stamp as 1990.
- The photocopied envelope postmarked August 29, 1987 contains a Mexican stamp each with a value of one hundred and fifty pesos that commemorates the Mexican Touristy Industry. This stamp contains a stylized illustration of a portion of the beach at Mazatlan, Sinaloa, Mexico. This stamp is listed at page 952 of Volume 4 of the *2010 Scott Standard Postage Stamp Catalogue* as catalogue number 1516 A353. The catalogue lists this stamp's date of issue as October 19, 1987.

The fact that photocopied envelopes postmarked October 30, 1985, November 30, 1985, and August 29, 1987, all bear stamps that were not issued until 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.

In addition, a review of the record reveals that the applicant previously filed a Form I-589, Request for Asylum in the United States, on March 28, 1997. With the Form I-589 asylum

application, the applicant included a Form G-325A, Report of Biographic Information. On the Form G-325A biographic report, the applicant testified that he resided in [REDACTED] until January 1987. The record shows that the applicant signed the Form G-325A biographic report thereby certifying under the penalty of perjury that the information contained in such document was true and correct.

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 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. 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 based upon its withdrawal. This decision constitutes a final notice of ineligibility.