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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**



41

Date: **MAY 31 2012**

Office: NEW YORK

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.

A handwritten signature in black 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, New York, New York, 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 February 13, 2006.<sup>1</sup> Because the director erred in denying the application based on abandonment, on October 7, 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.

On appeal, the applicant indicated that he was filing an appeal as directed in the notice from United States Citizenship and Immigration Services (USCIS) (formerly the Immigration and Naturalization Service, or the Service) dated October 7, 2010. The applicant claimed that he did not appear for the scheduled interview because the appointment notice had been mailed to an out-of-date address. The applicant reaffirmed his claim of residence in the United States since prior to January 1, 1982 and asserted that he had submitted sufficient evidence in support of this claim. The applicant included copies of previously submitted documents with his 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.<sup>2</sup>

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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<sup>1</sup> 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.

<sup>2</sup>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.

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 July 22, 2004.

In support of his claim of residence in the United States for the requisite period, the applicant submitted affidavits of residence, a photocopied residential lease, letters of employment, a letter of membership, an affidavit relating to the applicant's unsuccessful attempt to apply for legalization in 1987, and 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 November 29, 1981, July 4, 1982, July 31, 1982, August 6, 1983, an indeterminate day in December 1984, October 21, 1985, November 27, 1986, September 15, 1987, and April 14, 1988. Although the applicant submitted additional envelopes in support of his claim of residence, these additional envelopes contain postmarks dated after the termination of the requisite period. The original envelopes postmarked November 29, 1981, July 4, 1982, July 31, 1982, August 6, 1983, an indeterminate day in December 1984, October 21, 1985, November 27, 1986, September 15, 1987, and April 14, 1988, all contain Pakistani postage stamps and were represented as having been mailed from Pakistan to the applicant at addresses in this country he claimed as residences during the requisite period. A review of the *2010 Scott Standard Postage Stamp Catalogue Volume 5* (Scott Publishing Company 2009), reveals the following regarding the Pakistani postages stamp affixed to these envelopes:

- The original envelopes postmarked November 29, 1981, July 4, 1982, July 31, 1982, August 6, 1983, and an indeterminate day in December 1984, all bear the same postage stamp each with a value of one rupee. This stamp contains the picture of [REDACTED] framed by a multicolor oval. This stamp is listed at page 19 of Volume 5 of the *2010 Scott Standard Postage Stamp Catalogue* as catalogue number 712 A357. The catalogue lists this stamp's date of issue as August 14, 1989.
- The original envelope postmarked April 14, 1988 contains a stamp with a value of three rupees that commemorates the tenth anniversary of the founding of the Center on Integrated Rural Development for Asia and the Pacific (CIRDAP) in 1989. The stamp contains a stylized illustration of fields in the foreground, a background featuring an electrical tower, various buildings, and the sun, and the name of this organization on the bottom. This stamp is listed at page 19 of Volume 5 of the *2010 Scott Standard Postage Stamp Catalogue* as catalogue number 727 A367. The catalogue lists this stamp's date of issue as December 31, 1989.

The fact that original envelopes postmarked November 29, 1981, July 4, 1982, July 31, 1982, August 6, 1983, an indeterminate day in December 1984, and April 14, 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 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 April 17, 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.

In response, the applicant submits a statement in which he contends that the postmarks contained on the original envelopes he submitted in support of his claim of residence are not necessarily an accurate reflection of when the envelopes had been mailed for a variety of reasons. The applicant asserts that such "careless impressions" resulting in an inaccurate postmark could be caused by:

"[D]amage to the original stamp, defective die material, wet ink, misalignment of the envelop[sic], bubbles and impurities as dirt, hair on the stamp, edges wearing out and breaking down, accumulated extra ink and last of all the individual putting the pressure while printing the mark of the stamp."

The applicant states that the person applying the postmark to the envelope may have picked up a wrong stamp pertaining to a different year. The applicant notes that these postmarked envelopes "were sent from a country where the mailing procedures are outdated. Coupled with problem of load shedding of electricity, the mistakes are common and anything can be expected."

The applicant declares that he cannot remember when the envelopes in question were mailed to him. The applicant states that he examined copies of the envelopes that he had retained and envelopes postmarked with what appeared to be 1981 and 1986 were actually postmarked 1989. The applicant notes that he contacted the friends who had mailed these envelopes to him and they confirmed that the envelopes had been mailed in 1989.

However, an examination of the original envelopes submitted by the applicant both with the naked eye and with lighted 10X magnification provided by a Bausch & Lomb Lenscope CAT. NO. 81-34-44, reveals that with the exception of the envelope postmarked an indeterminate day in December 1984, the remaining original envelopes have clearly discernible postmarks of November 29, 1981, July 4, 1982, July 31, 1982, August 6, 1983, and April 14, 1988, respectively, without any indication that any of the postmarks are the result of "careless impressions." Further, the applicant fails to provide any independent evidence to corroborate the assertions and claims he advances in an attempt to explain how original envelopes postmarked November 29, 1981, July 4, 1982, July 31, 1982, August 6, 1983, an indeterminate day in December 1984, and April 14, 1988, all bear postage stamps that were not issued until well after the date of these postmarks. 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)).

The applicant objects to the AAO's reliance upon the *2010 Scott Standard Postage Stamp Catalogue* as an authority to determine the issue date of stamps. 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 first day of issue, the year of release if the month of the official first day of issue cannot be determined, and year and month of release if the official first day of issue cannot be determined to the exact day. In this case, the *2010 Scott Standard Postage Stamp Catalogue* lists specific day, month, and year for the official first day of issue rather than a general year of issue date for each of the four different Pakistani stamps contained on the postmarked envelopes cited above and does not contain any footnote indicating such stamps were available prior to the official first date of issue. In addition, 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. In addition, a review of the website at <http://www.pakistanphilately.com> confirms the respective date of issue for each of the two different Pakistani stamps cited above as the same date of issue listed in Volume 5 of the *2010 Scott Standard Postage Stamp Catalogue* Volume 5.

The applicant is correct in noting that in order to find an individual inadmissible under section 212(a)(6)(C)(1) of the Act, it must be found that individual either by fraud or willfully representing a material fact sought to procure a visa, other documentation, admission to the United States, or other benefit provided under the Act. The applicant is also correct in noting that the confidentiality provisions at section 245A(c)(5) of the Act limit the use of information submitted by applicants in support of their applications for temporary residence under section 245A of the Act. However, there has been no finding that the applicant is inadmissible under section 212(a)(6)(C)(1) of the Act in these current proceedings. In addition, 8 C.F.R. § 245a.2(t)(4) specifically states:

If a determination is made by the Service that the alien has, in connection with his or her application, engaged in fraud or willful misrepresentation or concealment of a material fact, knowingly provided a false writing or document in making his or her application, knowingly made a false statement or representation, or engaged in any other activity prohibited by section 210(b)(7) of the Act, the Service shall refer the matter to U.S. Attorney for prosecution of the alien or any other person who created or supplied a false writing or document for use in an application for adjustment of status under this part.

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.