



U.S. Citizenship
and Immigration
Services

[REDACTED]

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Date: **NOV 28 2012**

Office: HOUSTON

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:

[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.

Ron Rosenberg
Acting 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, Houston, Texas. The matter 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 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 and that the director erred in terminating the applicant's temporary resident status.

During the adjudication of the appeal, the AAO discovered derogatory information regarding original and photocopied postmarked envelopes that the applicant had submitted as evidence supporting his claim of residence in the United States for the period in question. On October 9, 2012, the AAO issued a notice to both the applicant and counsel advising them of 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 in which he requests on the applicant's behalf that the applicant's appeal be withdrawn. Although this request to withdraw the appeal shall be honored, the following facts must be noted.

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

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).

¹ 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).

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. 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 April 7, 2004.

In support of his claim of residence in the United States for the requisite period, the applicant submitted affidavits of residence, an employment affidavit, affidavits relating to the applicant's unsuccessful attempt to apply for legalization, and original postmarked envelopes.

The director approved the applicant's Form I-687 application for temporary residence on July 14, 2004.

The director subsequently determined 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 February 3, 2012.

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 original envelopes postmarked October 28, 1987, December 30, 1988, June 21, 1989, September 20, 1989, and October 29, 1989. Although the envelopes postmarked December 30, 1988, June 21, 1989, September 20, 1989, and October 29, 1989 are dated subsequent to the termination of the requisite period on May 4, 1988, the applicant submitted these documents as evidence of his residence in this country as of the date of these respective postmarks. These original envelopes bear Mexican postage stamps and were represented as having been mailed from Mexico to the applicant at the address in this country that he claimed as his residence from August 1981 to February 1992. A review of the *2010 Scott Standard Postage Stamp Catalogue* Volume 4 (Scott Publishing Company 2009) reveals the following:

- The original envelope postmarked October 28, 1987, bears four of the same Mexican stamp each with a value of four hundred and fifty pesos. This stamp

commemorates the 25th anniversary of the National Museum of Anthropology in Chapultepec, Mexico in 1989, and contains stylized illustrations of two animals. This stamp is listed at page 955 of Volume 4 of the *2010 Scott Standard Postage Stamp Catalogue* as catalogue number 1623 A572. The catalogue lists this stamp's date of issue as September 17, 1989.

- The original envelopes postmarked December 30, 1988 and September 20, 1989, both bear the same Mexican stamp each with a value of two thousand pesos. The stamp contains a stylized illustration of a section of gray wrought iron fence, the Spanish words for wrought iron "hierro forjado," and the notation "Mexico Exporta" encircling an eagle's head in the right hand corner, and lined burelage (a pattern of fine lines or dots printed on a stamp to discourage counterfeiting or re-use) with lines running lower left to upper right forming an arch towards the lower right corner. This stamp is listed at page 954 of Volume 4 of the *2010 Scott Standard Postage Stamp Catalogue* as catalogue number 1598A. The catalogue lists this stamp's date of issue as 1990.

The fact that original envelopes postmarked October 28, 1987, December 30, 1988, and September 20, 1989, all bear 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).

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.