

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

L2

FILE:

MSC 05 020 16235

Office: SEATTLE

Date: DEC 11 2008

IN RE:

Applicant:

APPLICATION: Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by Life Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

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.

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom, 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, Seattle, Washington, and 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 Citizenship and Immigration Services or CIS) in the original legalization application period between May 5, 1987 to May 4, 1988. 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 Immigration and Nationality Act (Act), and therefore, denied the application.

On appeal, counsel submitted a Freedom of Information Act request for a copy of the record and indicated a brief would be forthcoming within sixty of compliance with the request for a copy of the record. The record shows that CIS complied with the request and mailed a copy of the record to counsel on August 25, 2008.

Counsel subsequently submitted a brief in which he asserted that the applicant submitted sufficient evidence to demonstrate his claim of residence in the United States for the requisite period. Counsel objected to the director's consideration, acknowledgement, attempts at verification, analysis, and treatment of documentation submitted in support of the applicant's claim of residence. Counsel included copies of previously submitted documents, a declaration from the applicant, and declarations from six individuals in support of the appeal.

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.

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 CIS on October 20, 2004.

The applicant submitted an affidavit attesting to his attempts to file a legalization application during the original application period, two employment affidavits, eight affidavits of residence, a photocopied receipt for a motel room, and five original envelopes postmarked December 8,

1981, November 23, 1986, April 15, 1987, September 1, 1987, and February 8, 1988, respectively, in support of his claim of continuous residence in the United States from prior to January 1, 1982.

The director determined that the applicant failed to submit sufficient evidence demonstrating his residence in the United States in an unlawful status from prior to January 1, 1982. Therefore, the district director concluded that the applicant was ineligible to adjust to temporary residence and denied the Form I-687 application on January 23, 2007.

The director determined that the applicant failed to submit sufficient evidence demonstrating his residence in the United States in an unlawful status from prior to January 1, 1982. Therefore, the director concluded that the applicant was ineligible to adjust to temporary residence and denied the Form I-687 application on January 23, 2007.

Counsel's remarks on appeal relating to the sufficiency of the evidence submitted by the applicant in support of his claim of continuous residence are noted. Regardless, the director's conclusions regarding the sufficiency of the supporting documents contained in the record must be considered as harmless error as the AAO conducts a de novo review, evaluating the sufficiency of the evidence in the record according to its probative value and credibility as required by the regulation at 8 C.F.R. § 245a.2(b).

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 from prior to January 1, 1982. As noted above, the applicant provided five original envelopes postmarked December 8, 1981, November 23, 1986, April 15, 1987, September 1, 1987, and February 8, 1988, respectively, in support of his claim of residence in the United States for the requisite period. These original envelopes bear Indian postage stamps and were purportedly mailed from India to the applicant at addresses that he claimed as your residence in this country on the date of each of the respective postmarks. A review of the *2006 Scott Standard Postage Stamp Catalogue* Volume 3 (Scott Publishing Company 2005) reveals the following:

- The envelope postmarked December 8, 1981 bears a stamp with a value of one rupee that contains a stylized illustration of a Saras Crane. This stamp is listed at page 839 of Volume 3 of the *2006 Scott Standard Postage Stamp Catalogue* as catalogue number 1822 A1237. The catalogue lists this stamp's date of issue as July 20, 2000. The envelope also bears five of the same stamps each with a value two rupees. This stamp contains a stylized illustration of a rose. This stamp is listed at page 843 of Volume 3 of the *2006 Scott Standard Postage Stamp Catalogue* as catalogue number 1979 A1338. The catalogue lists the date of issue for this stamp as August 16, 2002.
- The envelope postmarked November 23, 1986 bears a stamp with a value of five rupees that contains a stylized illustration of a Leopard Cat. This stamp is listed at

page 839 of Volume 3 of the *2006 Scott Standard Postage Stamp Catalogue* as catalogue number 1825 A1239. The catalogue lists this stamp's date of issue as April 30, 2000. The envelope also bears two of the same stamps each with a value two rupees. This stamp contains a stylized illustration of a rose. This stamp is listed at page 843 of Volume 3 of the *2006 Scott Standard Postage Stamp Catalogue* as catalogue number 1979 A1338. The catalogue lists the date of issue for this stamp as August 16, 2002.

- The envelopes postmarked April 15, 1987 and February 8, 1988 both bear two of the same stamps each with a value five rupees. This stamp contains a stylized illustration of a Leopard Cat and is listed at page 839 of Volume 3 of the *2006 Scott Standard Postage Stamp Catalogue* as catalogue number 1825 A1239. The catalogue lists this stamp's date of issue as April 30, 2000. Both envelopes also bear a stamp with a value of one rupee that contains a stylized illustration of a Saras Crane. This stamp is listed at page 839 of Volume 3 of the *2006 Scott Standard Postage Stamp Catalogue* as catalogue number 1822 A1237. The catalogue lists this stamp's date of issue as July 20, 2000.
- The envelope postmarked September 1, 1987 bears a stamp with a value of five rupees that contains a stylized illustration of a Leopard Cat. This stamp is listed at page 839 of Volume 3 of the *2006 Scott Standard Postage Stamp Catalogue* as catalogue number 1825 A1239. The catalogue lists this stamp's date of issue as April 30, 2000. The envelope also bears three of the same stamps each with a value two rupees. This stamp contains a stylized illustration of a rose. This stamp is listed at page 843 of Volume 3 of the *2006 Scott Standard Postage Stamp Catalogue* as catalogue number 1979 A1338. The catalogue lists the date of issue for this stamp as August 16, 2002.

The fact that envelopes postmarked December 8, 1981, November 23, 1986, April 15, 1987, September 1, 1987, and February 8, 1988, all bear stamps that were not issued until well after the date of these respective postmarks establishes that the applicant utilized documents in a fraudulent manner and made material misrepresentations in an attempt to establish his residence within the United States since prior to January 1, 1982. This derogatory information casts doubt on the applicant's 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 AAO issued a notice to the applicant and counsel on November 18, 2008 informing the parties that it was the AAO's intent to dismiss the applicant's appeal based upon the applicant's own contradictory testimony and the fact that he utilized the postmarked envelope 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 fifteen days to provide substantial evidence to overcome, fully and persuasively, these findings.

The AAO subsequently received a request to hold appeal in abeyance to allow adjudication of waiver. Even if a waiver were to be granted, the applicant has not met his burden of proof.

The existence of derogatory information that establishes the applicant used the postmarked envelope 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.

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