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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

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Date: **DEC 21 2011**

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:



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 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 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 interviews on February 28, 2006 and January 24, 2007.¹ Because the director erred in denying the application based on abandonment, on September 29, 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 USCIS on May 27, 2005.

In support of his claim of residence in the United States for the requisite period, the applicant submitted affidavits of residence, affidavits relating to the applicant's purported absence from the United States in 1987, an application to lease an apartment, 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 May 8, 1982, November 4, 1983, February 15, 1986, November 5, 1986, and January 6, 1987. These envelopes contain Indian postage stamps and were represented as having been mailed from India to the applicant at the address in this country that he claimed as his residence during the requisite period. A review of the *2010 Scott Standard Postage Stamp Catalogue* Volume 3 (Scott Publishing Company 2009), reveals the following regarding the Indian postage stamps affixed to the envelopes:

- The envelopes postmarked May 8, 1982 and November 4, 1983 both bear two of the same stamps each with a value of forty paise that commemorate the telecommunications industry. The stamp contains stylized illustrations of a television, a broadcast antennae, and a satellite dish. This stamp is listed at page 895 of Volume 3 of the *2010 Scott Standard Postage Stamp Catalogue* as catalogue number [REDACTED]. The catalogue lists this stamp's date of issue as October 15, 1988.
- The envelope postmarked November 5, 1986 bears a stamp with a value of sixty paise that contains a portrait of [REDACTED]. A review of the *2010 Scott Standard Postage Stamp Catalogue* reveals that similar stamps were initially issued in two different sized versions (23mm X 29mm listed at page 887 of Volume 3 of the *2010 Scott Standard Postage Stamp Catalogue* as catalogue number [REDACTED] first issued in 1976 and 17mm X 20mm listed at page 887 of Volume 3 of the *2010 Scott Standard Postage Stamp Catalogue* as catalogue number [REDACTED] first issued in 1978) both of which were valued at only twenty-five paise. Subsequent reissues of this type of stamp include a stamp with a value of thirty paise listed at page 893 of Volume 3 of the *2010 Scott Standard Postage Stamp Catalogue* as catalogue number [REDACTED] first issued in 1980, a stamp with a value of thirty-five paise listed at page 893 of Volume 3 of the *2010 Scott Standard Postage Stamp Catalogue* as catalogue number [REDACTED] first issued in 1980, a stamp with a value of fifty paise listed at page 893 of Volume 3 of the *2010 Scott Standard Postage Stamp Catalogue* as catalogue number [REDACTED] first issued in 1983, and a stamp with a value of sixty paise listed at page 887 of Volume 3 of the *2010 Scott Standard Postage Stamp Catalogue* as catalogue number [REDACTED] first issued in 1988. The sixty paise stamp depicting [REDACTED] that is on the original envelope November 5, 1986 submitted by the applicant in support of his claim of residence in this country for the requisite period is listed at page 887 of Volume 3 of the *2010 Scott Standard Postage Stamp Catalogue* as catalogue number [REDACTED]. This sixty paise stamp depicting [REDACTED] was issued in 1988.

- The envelope postmarked January 6, 1987 bears an Indian postage stamp with a value of five rupees. This stamp commemorates solar energy and contains stylized illustrations of the sun, a solar panel, a streetlight, and buildings. This stamp is listed at page 902 of Volume 3 of the *2010 Scott Standard Postage Stamp Catalogue* as catalogue number [REDACTED]. The catalogue lists this stamp's date of issue as January 1, 1988.

The fact that original envelopes postmarked May 8, 1982, November 4, 1983, November 5, 1986, and January 6, 1987, all bear postage stamps that were not issued until well after the date of this postmark 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 October 13, 2011, the AAO informed the applicant and counsel that it was the AAO's intent to dismiss the applicant's 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 parties were granted twenty-one days to provide substantial evidence to overcome, fully and persuasively, these findings. In response, counsel requested a thirty-day extension to submit additional documentation in support of the appeal. However, the record shows that as of the date of this decision, neither the applicant nor counsel has submitted a substantive 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).

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