



U.S. Citizenship
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[Redacted]

FILE: [Redacted]
MSC 05 333 10131

Office: NEW YORK

Date: DEC 20 2007

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

ON BEHALF OF APPLICANT: SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

Robert P. Wiemann, 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 District Director, New York. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant submitted a Form I-687, Application for Status as a Temporary Resident Under Section 245A of the Immigration and Nationality Act (Act), and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, on August 29, 2005. The director determined that the applicant had not established by a preponderance of the evidence that he had continuously resided in the United States in an unlawful status for the duration of the requisite period. The director observed that the applicant provided several affidavits with limited probative value, and no other documentary evidence to establish that he had resided in the United States for the requisite periods. The director denied the application as the applicant had not met his burden of proof and was, therefore, not eligible to adjust to Temporary Resident Status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, the applicant submits new affidavits and states that the attached evidence is all the proof available to him at this time.

An applicant for Temporary Resident Status 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 Act, 8 U.S.C. § 1255a(a)(2). The applicant must also 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, 8 U.S.C. § 1255a(a)(3). The regulations clarify that the applicant must have been physically present in the United States from November 6, 1986 until the date of filing the application. 8 C.F.R. § 245a.2(b)(1).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and physical presence, in accordance with the regulation at 8 C.F.R. § 245a.2(b)(1), "until the date of filing" shall mean until the date the applicant attempted to file a completed Form I-687 application and fee or was caused not to timely file. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

The applicant 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).

An applicant shall be regarded as having resided continuously in the United States if, at the time of filing no single absence from the United States has exceeded forty-five (45) days and the aggregate of all absences has not exceeded one hundred eighty (180) days between January 1, 1982 and the date of filing his or her

application for Temporary Resident Status unless the applicant establishes that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed. 8 C.F.R. § 245a.2(h)(1)(i).

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 applicant 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 furnished sufficient credible evidence to demonstrate that he resided in the United States from prior to January 1, 1982 through the date he attempted to file a Form I-687 application with the Service in the original legalization application period of May 5, 1987 to May 4, 1988. Here, the submitted evidence is not relevant, probative, and credible.

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 August 29, 2005. At part #30 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the applicant showed that he resided at [REDACTED], in Bakersfield, California from January 1981 until June 1988. At part #31 of the applicant's Form I-687 where he was asked to provide the names of all churches of which he is a member, he stated "None." At part #33 of the applicant's Form I-687, where he was asked to list the details of all employment in the United States since he first entered, he did not indicate that he had ever been employed in the United States.

The applicant has the burden of proving by a preponderance of the evidence that he has resided in the United States for the requisite period. 8 C.F.R. § 245a.2(d)(5). To meet his burden of proof, an applicant must provide evidence of eligibility apart from his own testimony. 8 C.F.R. § 245a.2(d)(6). The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of documentation that an applicant may submit to establish proof of continuous residence in the United States during the requisite period. This list includes: past employment records; utility bills; school records; hospital or medical records; attestations by churches, unions or other organizations; money order receipts; passport entries; birth certificates of children; bank books; letters or correspondence involving the applicant; social security

card; selective service card; automobile receipts and registration; deeds, mortgages or contracts; tax receipts; and insurance policies, receipts or letters. An applicant may also submit any other relevant document pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The applicant did not submit any evidence in support of his application to support his claim of continuous unlawful residence in this country from prior to January 1, 1982 until the date on which he was turned away when attempting to file a legalization application. The applicant provided a brief letter with his application in which he stated that that he entered the United States without inspection on January 20, 1981 at or near Calexico, California and had attempted to file such a completed Form I-687 application with an INS legalization office in Fresno, California in September 1987.

Because the applicant did not submit supporting evidence other than his own testimony, the director, National Benefits Center, issued a Notice of Intent to Deny the application on November 15, 2005, affording the applicant 30 days to submit evidence of his continuous residence in an unlawful status and continuous physical presence during the requisite periods.

In a response dated December 8, 2005, the applicant submitted the following documentation:

- An affidavit from [REDACTED] M.D., who resides in Potomac, Maryland. [REDACTED] states that he personally knows the applicant who "came to visit" him from California in 1981. He states that he and the applicant "visited Gurudawara together" and "then he stayed with us at our house." [REDACTED] states that the applicant moved to New York in 1984 and "has been attending the Gurudawara function" in New York. Here, [REDACTED]'s testimony that the applicant moved to New York in 1984 is inconsistent with the applicant's statement on Form I-687, signed under penalty of perjury, that he resided in Bakersfield, California continuously from January 1981 until June 1988. [REDACTED] does not indicate specifically when or how he first became acquainted with the applicant, nor does he indicate the dates on which the applicant "stayed" at his house, an ambiguous statement that could refer to a short visit from the applicant or could suggest that the applicant lived at the affiant's residence for a period of time. It is noted that the applicant did not indicate that he had ever resided in the state of Maryland. Finally, the affiant's statement that he visited Gurudawara, a Sikh place of worship, with the applicant is not consistent with the applicant's response of "None" on item #31 of his Form I-687, where he was asked to list his membership in any churches or religious organizations in the United States. Because [REDACTED] affidavit is inconsistent with the applicant's own testimony and lacks significant details that would lend credibility to his claimed 24-year relationship with the applicant, its probative value is extremely limited. Further, because it contains information which is not consistent with the information contained on the applicant's Form I-687 and in the applicant's own sworn testimony, doubt is cast on the testimony contained in it.
- An affidavit from [REDACTED], a resident of Thornwood, New York, who states that he has known the applicant since he "came from Maryland in 1984." [REDACTED] states that the applicant came to him looking for work and that the applicant worked in his workshop on "some days." It is noted that [REDACTED]'s statements that the applicant "came from Maryland in 1984"

to New York are also inconsistent with the applicant's statements on Form I-687 that he resided in Bakersfield, California from January 1981 until June 1988. He does not provide an address of residence for himself or for the applicant for the period in question, and he does not claim to have any personal knowledge of the applicant's residence prior to 1984. Because the affidavit is inconsistent with the applicant's own testimony, and is significantly lacking in detail, it can be given minimal weight in establishing that the applicant continuously resided in the United States for the duration of the requisite period. Further, because it contains information which is not consistent with the information contained on the applicant's Form I-687 and in the applicant's own sworn testimony, doubt is cast on the testimony contained in it.

- A letter from [REDACTED] of the Sikh Cultural Society, Inc. in Richmond Hill, New York. [REDACTED] confirms the applicant's current address in Bronx, New York, where he claims to have resided since 1999, and states that he has been a member of the congregation regularly "since long time." [REDACTED] does not indicate when he first met the applicant, nor does he indicate that he has any direct, personal knowledge of the applicant's residence in the United States during the requisite period between 1981 and 1988. Because there is no reason to conclude, based on the evidence submitted, that [REDACTED] knew the applicant during this period, this evidence is irrelevant to the applicant's claim. It is nevertheless noted once again that the applicant indicated on his Form I-687 that he has not belonged to a church or other organization in the United States.
- A copy of pages 1,2,3, 26 and 27 of the applicant's cancelled Indian passport, which was issued on March 21, 1975. The applicant stated that this evidence shows his first departure from India on September 14, 1980. Page 26 of the passport contains a partially illegible stamp which appears to show a departure from Delhi airport. However, the applicant did not submit copies of any other pages from the passport and it is thus impossible to conclude that this is his "first departure from India." The fact that the applicant left India for an unknown destination in September 1980 does not support his claim that he arrived in the United States on January 20, 1980.

The applicant was subsequently interviewed under oath by a CIS officer on March 23, 2006. At that time, he testified that he first entered the United States without inspection through California on January 20, 1981, after traveling from India to Hong Kong to Mexico. He stated that he traveled by truck to Maryland from California and lived with a doctor friend for three years before moving to New York City. The applicant testified that he did not work between January 1, 1982 and May 4, 1988. It is noted that the applicant's sworn testimony regarding his residence in the United States is inconsistent with the statements he made under penalty of perjury on his Form I-687 application, on which he stated that he resided in Bakerfield, California for the duration of the requisite period between 1981 and 1988. The applicant did not indicate at the time of his interview that he ever resided in Bakersfield, California. Doubt cast on any aspect of the applicant's proof may, of course, 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. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The applicant also stated that he had three children aged 22, 21 and 19 years, and that he was "married by proxy" in India in 1982. The record does not contain the dates and places of birth of the applicant's children, although based on their ages as of March 2006, it can be concluded that all three of them were born during his claimed period of continuous residence in the United States. It is reasonable to assume that the applicant's children were not born in the United States, as such evidence would be easily obtainable and would support the applicant's claims regarding his residence in this country during the requisite period. The applicant claims to have visited India in 1983, 1985 and 1987, but the record does not establish that his children's birthdates coincide with the dates he claims to have been in India for short visits. The applicant's "marriage by proxy" performed in 1982 is also not documented in the record. These unresolved questions cast further doubt on the credibility of the applicant's claims regarding his continuous residence in the United States from 1981 until 1988.

At the time of his interview, the applicant re-submitted the above-referenced affidavits. He also provided a letter from [REDACTED] of B&J Service of New York Corp., who stated that the company employs the applicant as a cashier. The attached pay stubs confirm that the applicant worked for this company beginning in January 2006.

On June 6, 2006, the director issued a Notice of Intent to Deny the application. The director observed that the only affidavit submitted in support of the applicant's claim of residence prior to January 1, 1982 is the affidavit of [REDACTED], whose statement provides no evidence that the affiant had direct, personal knowledge of the applicant's residency. The director remarked that the affidavit from [REDACTED] did not appear to be credible or amenable to verification, the affidavit from the Sikh Cultural Society, Inc. did not attest to any specific dates, and the letter from B&J Service of New York only referred to dates after January 2006. The director granted the applicant 30 days in which to submit additional evidence.

In response to the Notice of Intent to Deny, the applicant submitted one additional undated affidavit from [REDACTED], who states that he personally knows the applicant as a family friend. [REDACTED] states that the applicant has been residing in the United States since 1981, initially in Potomac, Maryland with [REDACTED] from 1981 to 1984, and with the affiant at [REDACTED] Jackson Heights, New York from 1984 until 1987. [REDACTED] states that the applicant subsequently lived in California for nine months and went back to India in 1988. [REDACTED] does not state when or how he first became acquainted with the applicant or how often he had contact with him during his claimed residence in Maryland or California. Although he claims that the applicant resided with him for a period of three years, he offers no details of any events or circumstances of the applicant's residence or any other specific information that would lend credibility to the claimed relationship of more than 24 years. Furthermore, the affidavit is inconsistent with the applicant's own statement that he lived in Bakersfield, California from January 1981 until June 1988. While the other affiants have testified to the applicant's residence in Maryland and New York, [REDACTED] is the only affiant who states that the applicant subsequently resided in California. Based on the inconsistencies noted, and the significant lack of detail, this affidavit has minimal probative value in supporting the applicant's claim of continuous residency in the United States during the requisite period.

The director denied the application on July 24, 2006. In denying the application, the director found that the applicant's response to the Notice of Intent to Deny did not adequately address the deficiencies in the applicant's evidence. The director determined that the record contained no proof that any of the affiants have direct personal knowledge of the events and circumstances of the applicant's residence and therefore were not credible. The director also acknowledged the applicant's submission of several pages from an expired passport, but observed that a partially illegible exit stamp from another country does not evidence that the applicant traveled to United States at that time, as claimed by the applicant.

On appeal, the applicant submits two affidavits, including: (1) a new affidavit from [REDACTED] M.D.; and (2) a new affidavit from [REDACTED] which is identical in content to that provided in response to the request for evidence. In his affidavit, [REDACTED] states that the applicant is known to him as a friend and lived with him as his resident from 1981 until 1984, at which time the applicant moved to New York. The applicant states that "these are the maximum proofs I can submit at this time."

Upon review, the applicant has not submitted evidence on appeal to overcome the deficiencies discussed above. As previously noted, the first affidavit from [REDACTED] did not clearly state that the applicant resided with him. In the previous affidavit, he stated that the applicant "came to visit him" and stayed at his house, but he did not acknowledge the applicant's continuous residence at his home in Maryland. The affiant provides no further details regarding how or when he first met the applicant, and, considering the affiant's claim that the applicant resided with him for more than two years and that he has known him for at least 25 years, is significantly lacking in details regarding the events and circumstances of the applicant's residence. Most importantly, the affiant's testimony remains inconsistent with the applicant's own statements on the Form I-687.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the requisite period, and has submitted declarations from only two people concerning that period. On the application, which the applicant signed under penalty of perjury, he showed that he resided in the United States at a single address in Bakersfield, California from January 1981 until June 1988. He later testified under oath that he traveled from California to Maryland by truck, resided in Maryland for three years, and then moved to New York City. [REDACTED] appears to confirm the information provided in the applicant's oral testimony, but failed to provide any further verifiable and detailed testimony relating to the applicant's continuous residence in the United States since prior to January 1, 1982. [REDACTED] provides no claim or proof of any relationship with the affiant other than noting that he is a "family friend," and provides no details that would lend credibility to his claim of having resided with the applicant from 1984 until 1987. While he provides specific addresses at which the applicant resided, his testimony is inconsistent with the applicant's statements on Form I-687, and with the applicant's oral testimony, as [REDACTED] indicates that the applicant resided in Maryland, New York, and then California.

Doubt cast on any aspect of the petitioner's proof may, of course, 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 petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92.

As is stated above, 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). The applicant has been given the opportunity to satisfy his burden of proof with a broad range of evidence pursuant to 8 C.F.R. § 245a.2(d)(3). However, this applicant has not provided any contemporaneous evidence of residence in the United States relating to the 1981-88 period, and has submitted attestations from only two (2) affiants concerning that period, neither of which is credible or probative, based on the discussion above. These affidavits are not sufficient to satisfy the applicant’s burden of proof.

The absence of sufficiently detailed, consistent documentation to corroborate the applicant’s claim of continuous residence for the entire requisite period seriously detracts from the credibility of this 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. Given the applicant’s reliance upon documents with suspect credibility and minimal 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 date he attempted to file a Form I-687 application as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M-*, *supra*. The applicant is, therefore, ineligible for Temporary Resident Status under section 245A of the Act on this basis.

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