



U.S. Citizenship
and Immigration
Services

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LL

[REDACTED]

FILE: [REDACTED]
MSC 05 027 16485

Office: LOS ANGELES

Date: DEC 26 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:

[REDACTED]

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, Los Angeles, and 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. 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. Specifically, the director referred to documentation the applicant submitted in support of his claim and determined that it lacked probative value and failed to establish the applicant's residence in the United States during the statutory time period. The director also noted that evidence of a passport issued to the applicant in 1983 is inconsistent with the applicant's claimed list of departures from the United States. The director denied the application, finding that 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, counsel provides a brief addressing one of the inconsistencies cited by the director.

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 Immigration and Nationality Act (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).

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. 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 period, 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 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 furnished sufficient credible evidence to demonstrate that he resided in the United States during the requisite time period. The applicant has supplemented the record with the following documentation in support of his claim:

1. An incomplete affidavit from [REDACTED] containing the city and state of the applicant's purported residential addresses from August 1981 to "present." The affidavit is neither signed nor dated by the affiant. As such, it cannot be determined what year "present" represents. The affiant also provided no facts explaining how he first met the applicant, the frequency of their encounters, or any other verifiable information regarding the applicant's purported residence in the United States.
2. An undated affidavit from [REDACTED] claiming to have lived with the applicant from July 1987 to September 1988. Aside the address where the applicant resided with the affiant, no further information was provided regarding the applicant's residence in the United States during the relevant time period.
3. An affidavit dated March 6, 1996 from [REDACTED] claiming that the applicant is a friend who attended the affiant's wedding in Canada. The affiant stated that the applicant stayed in Canada from July 1, 1987 to July 17, 1987.
4. An affidavit dated March 11, 1996 from [REDACTED] claiming that he has known the applicant since August 1981 and can attest to the applicant's continuous residence in the United States through July 1987. The affiant failed to provide any information about how he first met the applicant, the frequency of his encounters with the applicant, or any other

information concerning the events and circumstances of the applicant's life during his residence in the United States within the statutory time period.

5. An affidavit dated March 11, 1996 from [REDACTED], claiming that he met the applicant at a Sikh temple in Stockton, California where the applicant was preaching. The affiant stated that the applicant attended the temple from August 1981 through 1990. No information was provided establishing the frequency of the affiant's encounters with the applicant.
6. A letter from [REDACTED], owner of Chevron Service and a prospective employer of the applicant. Mr. [REDACTED] stated that the applicant would work 40 hours per week and earn \$6.00 per hour. The letter is undated and as such has no probative value, as it cannot be concluded that the employment offer took place during the statutorily relevant time period.
7. An affidavit dated August 20, 2005 from [REDACTED] claiming that he met the applicant in September 1981 at a [REDACTED] temple in Stockton, California where continued to meet the applicant. The affiant did not specify the frequency of his visits with the applicant or provide any further information that would convey the notion that he had a personal relationship with the applicant for over 23 years.
8. An affidavit dated August 24, 2005 from [REDACTED] claiming to have met the applicant in September 1981 during the affiant's vacation in Fresno, California. The affiant claimed that he saw the applicant once a year in Fresno, California. The affiant did not stated how frequently, if at all, he kept in touch with the applicant by other means aside from their alleged yearly visit in Fresno.

On appeal, counsel asserts that the director erred in reviewing some of the documentation submitted causing her to confuse two affiants with similar names. This error caused the director to conclude that inconsistent information was provided. Upon further review, the AAO concedes to counsel's assertion and withdraws the incorrect observation. However, counsel made no attempt to explain or reconcile the apparent inconsistency between the documentation showing that the applicant was issued foreign passport abroad in 1983 and the applicant's claim that his first departure from the United States was in 1987. 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 petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the 1981-88 period, and has submitted deficient attestations from third parties concerning all or a portion of that period. Additionally, the AAO questions the validity of the applicant's claim when the applicant presents different facts on similar applications. Specifically, in No. 34 of the first Form I-687, dated September 20, 1990, the applicant claimed membership in two religious organizations—a Sikh temple in Fresno, California and another [REDACTED] in Stockton, California. However, with regard to the same information requested in No. 31 of the more recent Form I-687, filed

on October 28, 2004, the applicant claimed no affiliations or associations, religious or otherwise. There is no explanation for this significant discrepancy.

The absence of sufficiently detailed supporting 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 contradictory statements on his applications and his reliance upon documents with 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*, 20 I&N Dec. 77. 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.