



U.S. Citizenship
and Immigration
Services

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FILE: 
MSC 05 327 12055

Office: New York

Date: FEB 01 2007

IN RE: Applicant: 

PETITION: 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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if the matter 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, New York, 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. Therefore, the district 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 denied the application.

On appeal, the applicant reiterates his claim of residence in this country since July 4, 1979 and states that any inconsistencies in testimony regarding his residence were the result of miscommunication. The applicant asserts that he has submitted all available documentation to support his claim of residence in the United States.

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. *See* 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. *See* 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. *See* 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. *See* 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).

8 C.F.R. § 245a.2(d)(3)(v) states that attestations by churches, unions, or other organizations to the applicant's residence by letter must: identify applicant by name; be signed by an official (whose title is shown); show inclusive dates of membership; state the address where applicant resided during membership period; include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; establish how the author knows the applicant; and, establish the origin of the information being attested to.

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 establish continuous residence 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 from 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 23, 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 listed

1985 through at least the date of the termination of the original legalization application period on May 4, 1988. Furthermore, the applicant failed to list any information at part #31 of the Form I-687 application where applicants were asked to list all affiliations or associations with clubs, organizations, churches, unions, business, etc. In addition, at part #33 of the Form I-687 application where applicants were asked to list all employment in the United States dating back to January 1, 1982, the applicant failed to list any employment. It must be noted that that the applicant failed to

include any evidence to establish continuous unlawful residence in this country since prior to January 1, 1982 with the Form I-687 application.

The record shows that the applicant was subsequently interviewed relating to his Form I-687 application at CIS' District Office in New York, New York on March 6, 2006. At the time of his interview the applicant submitted documentation in an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982.

The applicant provided a letter containing the letterhead of the Sikh Cultural Society, Inc., in Richmond Hill, New York that is signed by the [REDACTED]. In his letter, [REDACTED] provided the applicant's most current address and declared that the applicant had been coming to the congregation on a regular basis for a long time. However, [REDACTED] failed to provide any testimony that the applicant resided in this country for the period in question. In addition, [REDACTED] failed to include any of the applicant's addresses of residence during the entire period that the applicant was a member of this organization as required under 8 C.F.R. § 245a.2(d)(3)(v). Moreover, the applicant failed to advance any explanation as to why he did not list his membership in the Sikh Cultural Society, Inc., at part #31 of the Form I-687 application where applicants were asked to list all affiliations or associations with clubs, organizations, churches, unions, business, etc.

The applicant included affidavits that are signed by [REDACTED] respectively. Both affiants provided a listing of the applicant's residences that matches the applicant's listing of his addresses of residence from 1981 to 1989 at part #30 of the Form I-687 application. Both affiants testified that they often met the applicant at an unspecified Sikh Temple. However, as noted above the applicant failed to list any affiliations or associations with clubs, organizations, churches, unions, business, etc., at part #31 of the Form I-687 application.

A review of the record revealed that a Form I-130, Petition for Alien Relative, was submitted to the Service on the applicant's behalf by his spouse, a United States citizen, on April 30, 2001. The Form I-130 alien relative petition included a Form G-325A, Biographic Information Form, relating to the applicant. On the Form G-325A biographic report, the applicant specifically acknowledged that he resided in his native India from May 1946 until October 1997. Furthermore, the record contains a photocopy of a page from the applicant's Indian passport reflecting that he was admitted to the United States on November 10, 1997. The fact that the applicant previously admitted that he resided in India from 1946 to October of 1997 seriously impaired the credibility of his claim of residence in the United States from prior to January 1, 1982, as well as the credibility of any documentation submitted in support of that claim.

Doubt cast on any aspect of the evidence may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an 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. See *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

In the notice of intent to deny issued on March 9, 2006, the district director questioned the veracity of the applicant's claimed residence in the United States since prior to January 1, 1982 by citing the conflicts and contradictions noted above. The applicant was granted thirty days to respond to the notice and submit additional evidence in support of his claim of residence in this country since prior to January 1, 1982.

In response, the applicant submitted two additional affidavits but failed to directly address any of the issues raised by the district director relating to the credibility of his claim of residence in the United States for the requisite period.

The applicant included an affidavit signed by [REDACTED] who provided the applicant's current address and declared that he had personal knowledge that the applicant resided in the United States since 1985 as result of their friendship. However, [REDACTED] did not provide any specific and direct information, such as the applicant's address(es) of residence in the United States since 1985. In addition, [REDACTED] failed to provide any testimony that the applicant resided in this country from prior to January 1, 1982 to 1984.

The applicant provided an affidavit that is signed by [REDACTED] stated that the applicant lived with him at [REDACTED] 1982 and again from 1985 to 1989. However, the credibility of any testimony put forth by [REDACTED] relating to the applicant's purported residence in this country for the period in question is completely diminished by the applicant's admission that he resided in his native India from May 1946 until October 1997.

The district director determined that the applicant had failed to submit sufficient evidence establishing his continuous residence in this country since prior to January 1, 1982, and, therefore, denied the application on July 19, 2006.

On appeal, the applicant contends that the Form G-325A biographic report listed India as his residence from May 1946 to October 1997 because his former attorney advised him not to reveal his prior illegal residence in the United States in preparing the Form I-130 alien relative petition. However a review of both the Form I-130 alien relative petition and Form G-325 biographic report reveals no indication that either document had been prepared by anyone other than the applicant and his United States citizen spouse. Furthermore, the record shows that a Notice of Entry of Appearance as Attorney or Representative (Form G-28) was not submitted either with the Form I-130 alien relative petition or any subsequent point in those corresponding proceedings. Without independent evidence to corroborate the applicant's contentions, his explanation cannot be considered as persuasive. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998)(citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The applicant asserts that no attempts have been made to contact the affiants that provided supporting documentation and verify their testimony. The applicant contends that he could not obtain further documentation to support his claim of residence in this country because of his status as an illegal alien and because much of his supporting documentation had been destroyed in a flood in

India in 1991. However, the applicant failed to provide any independent evidence to demonstrate that he himself was adversely affected by a flood. While it is acknowledged that it may be difficult to obtain supporting documentation relating to a period when the applicant was purportedly residing in this country as an undocumented alien, such status is insufficient to explain the contradictions and conflicts between the applicant's own testimony and the testimony contained in the applicant's supporting documents. Although the applicant notes that no attempt has been made to verify the content of testimony contained in the supporting documentation, he fails to advance any compelling reason as to why any attempt should be made in light of the minimal probative value of the applicant's evidence of residence. Finally, the applicant himself has impaired the credibility of such claim by specifically acknowledging that he resided in India from 1946 to October 1997 on the Form G-325A.

The absence of sufficiently detailed supporting documentation and the existence of conflicting testimony that contradicts critical elements of the applicant's claim of residence seriously undermines the credibility of the supporting documents, as well as the credibility of the applicant's claim of residence in this country for the period in question. The applicant himself has negated the credibility of his claim of continuous residence in this country since prior to January 1, 1982 by providing a Form G-325A biographic report in which he admitted that he lived in India until October 1997. Pursuant to 8 C.F.R. § 245a.2(d)(3), 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 to May 4, 1988 by a preponderance of the evidence as required under both 8 C.F.R. § 245a.2(d)(3) and *Matter of E- M-*, 20 I&N Dec. 77 (Comm. 1989).

Given the applicant's reliance upon supporting documents with minimal probative value and his own admission that he lived in India from 1946 to October 1997, 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 May 4, 1988 as required under section 245A(a)(2) of the Act. 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.