



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED]
MSC-04-329-22960

Office: NEW YORK

Date: JUN 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:

[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, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined the applicant had not proven by a preponderance of the evidence that he has resided in the United States for the requisite periods, is admissible to the United States under the provisions of section 245A of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1255a, and is otherwise eligible for adjustment of status under this section. As a result, the director denied the application.

On appeal, the applicant resubmits a witness letter included in prior applications and offers an explanation of his failure to provide additional documentation of his entry into the United States.

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.

An applicant 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, 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.

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 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 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 Citizenship and Immigration Services (CIS) on August 16, 2004. 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 his first address in the United States to be at [REDACTED], Van Nuys, California, from October 1980 to July 1990. At part #31 where applicants were asked to list all affiliations or associations, the applicant listed nothing. At part #32 where applicants were asked to list absences from the United States, the applicant listed three visits to India from November to December 1987, December 1993 to March 1994, and September 2003 to December 2003. At part #33 where applicants were asked to list employment in the United States, the applicant indicated that he was self-employed at odd jobs from October 1980 to July 1990. The applicant did not specify any work locations for this time period. The applicant provided no supporting documentation of his employment in the United States. In fact, the applicant initially provided no documentation other than the Form I-687 to support any aspect of his claim of continuous unlawful residence, since prior to January 1, 1982.

The director issued a Notice of Intent to Deny on August 16, 2005. The notice referred to inconsistencies between the applicant's interview for his Form I-687 and for his Form I-485 application for permanent residence. At the I-687 interview on May 31, 2005, the applicant testified that he had worked at a car wash in Van Nuys, California from 1981 to 1990, and he could not recall the name of the car wash. This testimony conflicted with the testimony at the applicant's first interview with a CIS officer. At the I-485 interview on March 10, 2004, the applicant testified that he had worked for a car wash in Van Nuys, California, for four years and then had worked for a grocery store until 1989. An additional inconsistency was noted by the director. At the I-687 interview, the applicant stated that his wife was never in the United States. According to the Form I-485 the applicant submitted, his son [REDACTED] was born on November 24, 1986 in India. When the officer questioned the applicant about his son, the applicant stated that his wife did come to the United States in May 1986 and stayed for nine months. This would have placed the applicant's wife in the United States at the time of his son's birth.

The applicant again corrected himself and stated that his wife only stayed six or seven months. The director questioned this testimony because it would still place the applicant's wife in the United States at the time of her son's birth or on an airplane late in pregnancy when it would be unlikely she would be allowed to board an airplane. The applicant corrected himself again and stated that his wife came to the United States in 1985. In the I-485 interview, the applicant testified that his wife visited the United States from May 5, 1985 to September 1985. The applicant provided no explanation for his son's birth, which occurred fourteen months after the applicant last had contact with his wife. Later in the interview, the applicant changed his testimony and stated that his wife left the United States on March 17, 1986.

Additional inconsistent testimony was provided by the applicant in his two CIS interviews. At the I-485 interview the applicant stated that he initially lived with a friend named ██████████ when he first arrived in the United States, as well as a man whose name might be ██████████. ██████████ moved away after six months, and Jegrage moved in 1983, so the applicant lived alone starting in 1983. At his I-687 interview, the applicant testified that he lived with a friend from India named ██████████ from 1980 until July 1990. All the inconsistencies in the applicant's testimony call into question whether the applicant actually entered the United States prior to January 1, 1982, and continuously resided in the United States since that date.

The director identified an additional inconsistency between the applicant's oral testimony and written documentation. On his affidavit in support of class membership dated March 28, 1990, the applicant stated that he entered the United States in October 1980 with a B1/B2 visitor visa. However, in both CIS interviews the applicant claimed that he entered the United States from Canada without inspection in October 1980. This inconsistency calls into question whether the applicant actually entered the United States prior to January 1, 1982, and whether the applicant continuously resided in the United States in unlawful status during the statutory period.

The director also noted that the record included copies of pages of a passport issued to the applicant on December 18, 1996, in New York. Page 35 of the passport states "previously traveled on passport No. ██████████ issued at Chandigosh on 25-8-1986 which has been reported lost." This indicates the applicant was in India on August 8, 1986, and is inconsistent with the applicant's written statement on Form I-687 that he departed from the United States for the first time in 1987.

In response to the Notice of Intent to Deny, the applicant provided a written statement. The applicant attempted to explain his class membership affidavit, which indicated that he entered the United States in B-1/B-2 status, as a typographical error. The applicant reiterated that he entered the United States without inspection from Vancouver, Canada in October 1980. The applicant also indicated his limited understanding of English is responsible for this error. The applicant attempted to explain the misstatements in his interviews by stating that he was nervous and confused in the interviews. The applicant provided no additional supporting documentation. The director found that the information and documentation the applicant submitted was insufficient to overcome the grounds for denial described in the notice and, as a result, denied the application.

On appeal the applicant provided a photocopy of a letter that had been submitted by the applicant with a prior application. The letter was signed by ██████████, President of Sikh Temple Gurdwara Yuba City. The letter states that ██████████ met the applicant in 1981 at the Sikh Temple Gurdwara Yuba City. The letter states that the applicant "often" comes to the temple at the annual parade every year since 1981 and stays at the temple for about four to five days. The letter also confirms the applicant attends functions like wedding

ceremonies. It is noted that this letter does not confirm the applicant's continuous residence in the United States since before January 1, 1982. In addition, this letter is found not to conform to the standard established by 8 C.F.R. § 245a.2(d)(3)(v) for attestations to the applicant's residence by churches, unions, or other organizations, which requires that the letter state the address where the applicant resided during the membership period. Lastly, the applicant did not indicate that he was affiliated with the Sikh Temple Gurdwara Yuba City on his Form I-687 application or on his I-485 application, which asked for all group affiliations. The appeal also included a written statement from the applicant's attorney indicating the applicant has no documentation of his illegal entries because he entered with the help of a travel agent who kept all the documentation himself.

It is noted that the record includes two form affidavits submitted by the applicant in the context of his I-485 application. The first affidavit, from [REDACTED] states that [REDACTED] knows the applicant lived in the United States between 1981 and 1986. The affidavit provides very little detail regarding [REDACTED] knowledge of the applicant. For example, when asked to state the reason the affiant knows of the applicant's residence, [REDACTED] stated she personally knew of the above information because of "visiting each other." The affiant provided no specific facts regarding how she became acquainted with the applicant. In addition, the identity documentation submitted with the affidavit lists the affiant's name as "[REDACTED]." No explanation is provided for the variation in the spelling of the affiant's first name, and no marriage or other documentation is provided to substantiate the affiant's change of last name. Lastly, the affiant provided no supporting evidence that she was living in the United States during the statutory period and no supporting evidence of her relationship to the applicant.

The second affidavit, from [REDACTED], states that the affiant knows the applicant was living in the United States from 1982 to 1986. The affiant explained that he used to see the applicant at the Sikh temple and that he has known the applicant as a member of a Sikh temple since 1982. The affiant did not express knowledge that the applicant entered the United States prior to January 1, 1982. Lastly, the applicant did not list any membership or affiliation with Sikh temples on his Form I-687.

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 affidavits and letters that lack sufficient detail or conflict with the applicant's testimony. Specifically, the affidavit from [REDACTED] lacks detail and is inconsistent with her identity documentation. The affidavit from [REDACTED] Singh conflicts with the applicant's testimony, which did not mention an affiliation with a Sikh temple. In addition, [REDACTED] did not indicate knowledge that the applicant entered the United States prior to January 1, 1982. The applicant submitted a letter from the president of Sikh Temple Gurdwara Yuba City. This letter does not confirm that the applicant continuously resided in the United States since January 1, 1982, and it fails to conform to the requirements of 8 C.F.R. § 245a.2(d)(3)(v). In addition, the applicant did not mention an affiliation with any Sikh temple on Form I-687. The applicant's oral testimony conflicts with his written statements regarding his manner of entry into the United States. This inconsistency calls into question when the applicant entered the United States and when his unlawful status began. Lastly, the applicant's I-687 interview testimony conflicts with itself and with the applicant's I-485 interview testimony regarding his employment, his living situation upon arriving in the United States, visits from his wife and the birth of his child, and the dates of his return trips to India. These inconsistencies call into question whether the applicant entered the United States prior to January 1, 1982 and whether he continuously resided in the United States in an unlawful status since that date.

The absence of sufficiently detailed and consistent 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 contradictory statements the applicant made in his two CIS interviews and the applicant's 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--*, *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.