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U.S. Citizenship
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LI

[REDACTED]

FILE: [REDACTED]
MSC 05 200 29544

Office: CHERRY HILL

Date: NOV 05 2007

IN RE: Applicant: [REDACTED]

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:

[REDACTED]

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. [REDACTED]-LKK (E.D. Cal) January 23, 2004, and *Felicity Mary Newman, et al., v. United States Immigration and Citizenship Services, et al.*, CIV. NO. [REDACTED]-WDK (C.D. Cal) February 17, 2004, (CSS/Newman Settlement Agreements) was denied by the District Director, Newark, New Jersey. The Administrative Appeals Office (AAO) remanded a subsequent appeal for referral to the Special Master for determination of class membership. The matter is now before the AAO on appeal. The appeal will be dismissed.

The director determined on remand that the applicant had established membership under the CSS/Newman Settlement Agreements, and by memo dated August 21, 2007, referred the case to the AAO for consideration of the applicant's claim of continuous residency in the United States during the requisite period.

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. The director further determined that the applicant's absence from the United States was not a "casual" absence, as outlined in section 245A(a)(3) of the Immigration and Nationality Act (the Act).

On appeal, the applicant states that his "alleged absence" to Canada was not hidden, that he went to Canada to pursue opportunities, and had no intentions of residing there. The applicant further states that under the terms of the settlement agreements, "corroborating evidence is not important," and that "[c]redible and consistent evidence should suffice."

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).

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 CIS in the original legalization application period from May 5, 1987 to May 4, 1988.

On a form to determine class membership, which he signed under penalty of perjury on April 19, 1990, the applicant stated that he first arrived in the United States in 1981. The record shows that the applicant submitted a Form I-687 application and a Form I-687 Supplement, CSS/Newman (LULAC) Class Membership Worksheet, to CIS on April 18, 2005. On his Form I-687 application, the applicant stated that he was self-employed doing odd jobs throughout the

qualifying period, and lived at [REDACTED] from September 1981 to August 1984, and at [REDACTED] from August 1984 to January 1990.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant submitted the following documentation:

1. An April 10, 1990 sworn declaration from [REDACTED] in which he stated that he had known the applicant since 1981, and that to his personal knowledge, the applicant resided at [REDACTED] from September 14, 1981 to August 9, 1984, and at [REDACTED] from August 1984 until the date of the declaration. [REDACTED] Singh, who did not identify his relationship to the applicant, listed his address as [REDACTED]. There is no indication that the applicant lived with Mr. Singh during the period indicated.
2. An October 3, 2001 and an April 24, 2003 affidavit from [REDACTED] in which he stated that he had known the applicant since November 1981, and that they met at the Sikh [REDACTED] stated that, at the time, he lived at [REDACTED] and that the applicant lived with him from November 1981 to 1986. This information is inconsistent with the information provided by the applicant on his Form I-687 application, and with the information provided by [REDACTED] discussed above. The applicant submitted no documentation to explain this inconsistency. 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).
3. A January 14, 2004 affidavit from [REDACTED] in which he stated that he had known the applicant since January 1982, when they met on [REDACTED] did not describe the circumstances of this first meeting, or how he dated his meeting with the applicant.

In support of his Form I-485, Application to Register Permanent Resident or Adjust Status, [REDACTED], filed on October 17, 2001, the applicant submitted an April 10, 1990 sworn affidavit from [REDACTED] in which he stated that the applicant lived at [REDACTED] California, from September 14, 1981 to August 9, 1984, and at [REDACTED] Fresno from August 9, 1984 until the date of the declaration. As discussed above, this information is inconsistent with the statement of [REDACTED], who stated that the applicant lived with him on [REDACTED] from 1981 to 1986.

On appeal, the applicant asserts that evidence to corroborate his continued residence in the United States is "not important," and that "credible and consistent testimony should suffice." The applicant misstates the requirements of the CSS/Newman Settlement Agreements. While the

agreements recognize that corroborating documentation may not always be available, they do not diminish the importance and significance of such documentation.

Furthermore, the applicant has not submitted credible and consistent testimony to establish his continuous residency in the United States from prior to January 1, 1982. The statement from Mr. [REDACTED] who stated that the applicant lived with him at his residence on [REDACTED] in Selma, conflicts with the statements of the applicant and others who submitted statements on the applicant's behalf. Additionally, the regulation at 8 C.F.R. § 245a.2(d)(3)(i) provides that, to prove continued residency "if the applicant has been in business for himself or herself, [he may submit] letters from banks and other firms with whom he or she has done business." The applicant claimed to have been self-employed from 1981 to 1991, however he submitted no documentation to verify this self-employment.

The applicant stated on his Form I-687 application that he was absent from the United States from June to August 1987, when he traveled to Canada "to be [an] immigrant" and to visit friends and relatives." The director determined that this cannot be considered a "casual" absence pursuant to section 245A(a)(3) of the Act, as the applicant's purpose was "deliberate and of major significance."

The regulation at 8 C.F.R. § 245a.1(h) provides, "The term brief and casual absences as used in section 245a(b)(3)(A) of the Act permits temporary trips abroad as long as the alien establishes a continuing intention to adjust to lawful permanent resident status." As noted, the applicant stated that the purpose of his visit to Canada was for the purpose of immigrating to that country. On a previous Form I-687 application, the applicant also admitted that he was out of the United States from June 29, 1987 to August 4, 1987 for the purpose of immigrating to Canada.¹ On appeal, the applicant denied that he had any intentions of remaining in Canada. However, this is contrary to his prior statements regarding his intentions when he traveled to Canada. Accordingly, the applicant has not established a continuing intention to adjust to permanent residence status in the United States.

Given the applicant's reliance upon supporting 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 May 4, 1988 as required under section 245A(a)(2) of the Act. Further, given his reasons for leaving the United States in 1987, the applicant has not established that he maintained a continuous intention to adjust to permanent residence status in the United States. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis.

¹ The director indicated in his decision that the applicant confirmed in his LIFE Act interview that he went to Canada to become an immigrant but "found there was no law there to allow [the applicant] to file for landed immigrant status." However, the record does not contain interview notes or a signed statement by the applicant verifying the director's statement.

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The record reflects that the director denied the applicant's Form I-485 application, [REDACTED] on May 12, 2004. The appeal of that denial is not at issue in this decision.

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