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**U.S. Citizenship
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Services**

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AUG 29 2008

FILE:

MSC-05-244-12464

Office: NEW YORK Date:

IN RE:

Applicant:

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:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

A handwritten signature in black ink, appearing to read "R. Wiemann", written over a light-colored background.

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. 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. Therefore, the director determined the applicant was not eligible to adjust to temporary resident status pursuant to the CSS/Newman Settlement Agreements and denied the application.

On appeal, the applicant submits a brief through counsel. Counsel asserts that the director erred when she determined that the evidence the applicant submitted in support of his application was not credible. He submits additional evidence in support of his application.

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).

For purposes of establishing residence and physical presence under the CSS/Newman Settlement Agreements, the term “until the date of filing” in 8 C.F.R. § 245a.2(b) means until the date the applicant attempted to file a completed Form I-687 application and fee or was caused not to timely file during the original legalization application period of May 5, 1987 to May 4, 1988. 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.* at 80. 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 has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421, 431 (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 meet his or her burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

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 June 1, 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 his addresses in the United States during the requisite period to be: [REDACTED] California from May 1981 until December 1987; and [REDACTED] Hollywood, California from January 1988 until May 1990. At part #31 where the applicant was requested to indicate all of his affiliations, associations, clubs, organizations, churches, unions and businesses of which he had been a member since he entered the United States, he indicated that he was not affiliated with any such institutions. At part #32 where the applicant was asked to list all of his absences from the United States, he indicated that during the requisite period, he had two absences. He stated that he was absent from December 1984 until January 1985 and from August to September in 1987 when he went to India to visit family. At part #33, where the applicant was asked to list all of his employment in the United States since he first entered, he showed that he was self-employed in an unspecified location as a laborer from May 1981 until May 1990.

The record further contains a Form I-687 submitted in 1990 to establish class membership. At part #34 of this Form I-687, as with his subsequently submitted Form I-687, the applicant indicates that he is not and has not been a member any churches or organizations in the United States. At part #35 of this Form I-687, the applicant indicated that he was only absent from the United States once during the requisite period, when he traveled to India from August 11 to September 17, 1987 to visit his family.

Also in the record are the notes from the Citizenship and Immigration Services (CIS) officer who interviewed the applicant on January 21, 2004 pursuant to his Form I-485 Application to Register Permanent Resident or Adjust Status. The officer's notes indicate that the applicant stated that he was employed during the requisite period doing farm and construction work but could not recall the name of the farm or construction company. These notes also indicate that the applicant indicated that he was only absent from the United States once, when he traveled to India from August 11, 1987 and returned on September 17, 1987. These notes also indicate that the applicant believed that he was married in February of 1976 in India and that he had children born in September 1981 and March of 1979 but that he was unsure of each of these dates.

Further in the record are notes from the applicant's interview with a CIS officer pursuant to his Form I-687 application on January 18, 2006. These notes indicate that the applicant testified that he was absent from the United States both in December 1984 for one month and from August to September 1987. These notes also indicate that the applicant testified that he was married on January 12, 1984 in India and that he had children who were 21 and 18 years of age who were born in India and that his wife had never traveled to the United States.

That the applicant has not consistently indicated the number of times he was absent from the United States during the requisite period casts doubt on whether the applicant has fully represented his absences from the United States at that time to CIS.

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 application. 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 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. 8 C.F.R. § 245a.2(d)(5). To meet his burden of proof, an applicant must provide evidence of eligibility apart from his or her 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 record contains the following evidence that is relevant to his claim of having maintained continuous residence in the United States during the requisite period:

An undated declaration from [REDACTED] who indicates that he resides in La Crescenta, California. The declarant states that he has known the applicant since 1981 when he met him in a Sikh Temple in Los Angeles. It is noted that the applicant did not state that he was a member of any churches or organizations on his either of his Forms I-687. This declarant does not state the frequency with which he saw the application during the requisite period or whether there were periods of time when he did not see the applicant. He does not state that he personally knows whether the applicant resided in the United States during the requisite period. Therefore, this affidavit carries no weight as evidence that the applicant resided in the United States during the requisite period.

An affidavit from [REDACTED] that was notarized on May 3, 2005. The affiant submits a photocopy of the identity page of his United States Passport with his affidavit. The affiant states that he met the applicant in New York in September 1981 at a temple at Richmond Hill, New York. He states that he has been in contact with the applicant since that time. He states that the applicant visited his home when he was in New York from 1981 to 1990. Though he speaks of the applicant's good moral character, he does not indicate the frequency with which he saw the applicant during the requisite period or indicate whether there were periods of time during that period when he did not see the applicant. Because this affidavit is significantly lacking in detail, it can be accorded only minimal weight as evidence that the applicant resided continuously in the United States for the duration of the requisite period.

- An affidavit from [REDACTED] that was notarized on May 5, 2005. The affiant submits a photocopy of the identification page of his United States passport with his affidavit. The affiant states that he has known the applicant since 1970 when he met him in India. He state that he personally knows that the applicant has been in the United States in 1981. He asserts that the applicant visited his home in September 1981 when he was visiting New York. He states that the applicant would visit his home and stay with him for a few days when he visited New York from 1981 to 1990. He states that he called the applicant during the requisite period. However, the affiant fails to state the frequency with which the applicant visited him in New York during the requisite period or whether there were periods during the requisite period when he did not see the applicant. Because this affidavit is significantly lacking in detail, it can be accorded only minimal weight as evidence that the applicant resided continuously in the United States for the duration of the requisite period.

A declaration from the [REDACTED] in Richmond Hill, New York. This declaration is dated January 20, 2004 and was signed by [REDACTED] who indicates he is the president of this society. It is noted that the applicant has indicated on both Forms I-687 that he was not a member of any churches or organizations. The declaration states that Mr. [REDACTED] has known the applicant since the "early 1980's." However, [REDACTED] does not state where he first met the applicant or whether he first met him in the United States. He states that the applicant has visited the temple regularly since his arrived in New York. The applicant has indicated that he resided in California from 1981 until 1990 and that he then moved to New York in 1990. As this declaration states that the applicant visited the temple after he moved to New York, this indicates that the applicant began attending the temple after the requisite period ended. Further, the declarant does not state that he personally knows that the applicant resided in the United States during the requisite period. Therefore, it carries no weight as evidence that he did so.

- An affidavit from [REDACTED] that was notarized on January 19, 2004. The affiant submits a photocopy of his Certificate of Naturalization with his affidavit. The affiant states that he has known the applicant since 1984. Though he speaks of the applicant's moral character and states that the applicant sometimes comes to his house and that he sometimes goes to the applicant's house, he does not state whether he knows if the applicant resided in the United States during the requisite period. As such, this affidavit carries no weight as evidence that he did so.
- An affidavit from [REDACTED] whose date of birth is April 23, 1949. The affiant submits a photocopy of his Certificate of Naturalization with his affidavit. This affidavit was notarized on January 19, 2004. The affiant states that he has known the applicant since 1983. He states that the applicant regularly attends Sunday prayers at a temple. However, the affiant fails to state how or where he first met the applicant or whether he first met him in the United States. He fails to state the frequency with which he saw the applicant during the requisite period or indicate whether there were periods of time during the requisite period when he did not see the applicant. He does not state that he personally knows whether the applicant resided in the United States during the requisite period. Though he states that the applicant joins Sunday prayers at a temple, he does not state when the applicant began doing so. It is noted that the applicant indicated that he was not affiliated with any churches or organizations on his Forms I-687. Because the affiant does not state that he personally knows that the applicant resided in the United States during the requisite period, this affidavit carries no weight as evidence that he did so.
- An affidavit from [REDACTED] whose date of birth is July 15, 1954. The affiant submits a photocopy of his Certificate of Naturalization with his affidavit. This affidavit was notarized on January 19, 2004. The affiant states that he has known the applicant since 1984. He states that the applicant regularly attends a temple and joins Sunday prayers there. However, the affiant fails to state how or where he first met the applicant or whether he first

met him in the United States. He fails to state the frequency with which he saw the applicant during the requisite period or indicate whether there were periods of time during the requisite period when he did not see the applicant. He does not state that he personally knows whether the applicant resided in the United States during the requisite period. Though he states that the applicant joins Sunday prayers at a temple, he does not state when the applicant began doing so. It is noted that the applicant indicated that he was not affiliated with any churches or organizations on his Forms I-687. Because the affiant does not state that he personally knows that the applicant resided in the United States during the requisite period, this affidavit carries no weight as evidence that he did so.

The director issued a Notice of Intent to Deny (NOID) to the applicant on February 1, 2006. In this NOID, the director stated that the applicant failed to submit evidence that was sufficient to meet his burden of proof. She specifically noted that the applicant failed to submit proof that any of the affiants from whom the applicant submitted affidavits were present in the United States during the requisite period or proof that they had direct, personal knowledge of the events to which they were attesting.

In response to the NOID, the applicant submitted the following additional evidence:

- A brief from the applicant's attorney that is dated March 1, 2006. In this brief, counsel asserts that evidence previously submitted by the applicant along with an additional affidavit from the applicant's uncle, [REDACTED] allow the applicant to satisfy his burden of proof.
- An affidavit from [REDACTED] that was notarized on February 21, 2006. The affiant states that he resided in Punjab, India for the duration of the requisite period and that he is the applicant's uncle. He states that he personally knows that the applicant left India in May 1981 and that he returned to India in December 1984 and then again in August 1987, staying for approximately four weeks during each visit. Though the affiant speaks of the applicant's good moral character, and though he indicates that the applicant called him to tell him that he was residing in the United States, because the affiant resided in India for the duration of the requisite period, he did not ever personally see the applicant in the United States.

The director denied the application for temporary residence on June 15, 2006. In denying the application, the director stated that though the applicant submitted an additional affidavit in support of his application in response to her NOID, this affidavit when considered with other evidence in the record, was not sufficient to allow the applicant to meet his burden of proof. In saying this, the director noted that affiant [REDACTED] was residing in India during the requisite period and therefore would have not have had direct personal knowledge of the events and circumstances of the applicant's residence in the United States at that time. Because the applicant failed to overcome the director's reasons for denial as stated in her NOID, she denied the application.

On appeal, the applicant submits a brief through counsel. In this brief, counsel asserts that previously submitted evidence satisfied the applicant's burden of proof. The applicant also resubmits the affidavit from [REDACTED] that was notarized on May 5, 2005. With this affidavit, [REDACTED] resubmits the identity page of his passport. In addition, he submits the following proof that affiant [REDACTED] resided in the United States during the requisite period: a photocopy of a New York State Driver's License issued to [REDACTED] on February 22, 1984; bank statements issued to [REDACTED] in the United States showing bank activity during the months of August through November of 1982 and December 1985 until the end of February 1986; and a remittance sent from the State Bank of India by the [REDACTED] to an individual in India on October 12, 1983.

The AAO has reviewed the evidence in the record that is relevant to the applicant's residence in the United States during the requisite period and has found that this applicant has failed to meet his burden of proof. Though he has submitted an affidavit from [REDACTED] who asserts that he saw the applicant in the United States in September 1981 and on various unspecified other dates during the requisite period when he was visiting New York, this affiant did not provide details regarding the frequency with which he saw the applicant during the requisite period. His affidavit indicates that he saw the applicant for a few days, when the applicant visited New York from 1981 to 1990. However, he does not indicate when these visits occurred or state what the purpose of these visits was. He does not indicate how he knows that the applicant resided in California during the requisite period or state whether he ever saw the applicant residing in California during that time. Though this affiant has provided substantial evidence of his own residence in the United States during the requisite period, that evidence does not overcome the significant lack of detail in his affidavit.

The applicant states that he resided in California for the duration of the requisite period, yet he has only submitted one affidavit from an affiant who resides in California in support of his application. This affiant, [REDACTED], states that he has known the applicant since 1981 and that he met him at a Sikh Temple in Los Angeles. However, he fails to state the frequency with which he saw the applicant during the requisite period or whether he knows if the applicant ever resided in the United States. [REDACTED] also states that he met the applicant at a Sikh Temple in 1981 in New York. He fails to state the frequency with which he saw the applicant during the requisite period or to provide details regarding the applicant's residence in the United States at that time. Though the applicant submitted a declaration from the Sikh Cultural Society in Richmond Hill, New York, declarant [REDACTED] who signed this declaration, states he has known the applicant since the early 1980's. However, this declarant does not indicate where he first met the applicant. He does not state the frequency with which he saw the applicant during the requisite period, which is significant because the applicant resided in California at that time. The applicant also indicated on two Forms I-687 that he has not ever been a member of any churches or organizations.

Affiants [REDACTED], and a second affiant named [REDACTED] indicate that they have known the applicant since 1984, 1983, and 1984 respectively. None of these three

affiants state that they personally know that the applicant resided in the United States during the requisite period. Therefore, their affidavits carry no weight as evidence that he did so.

In this case, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, as well as the inconsistencies and contradictions noted in the record, seriously detract from the credibility of his 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 inconsistencies in the record and the lack of credible supporting documentation, it is concluded that he has failed to establish by a preponderance of the evidence that he has continuously resided in an unlawful status in the United States for the requisite period 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.