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FILE: [REDACTED]  
MSC-05-265-10059

Office: LOS ANGELES

Date: **JAN 11 2008**

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:



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.

  
for 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. 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. 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 for the applicant asserted that the director failed to consider the quality of evidence provided by the applicant; failed to consider the effect of the passage of time on the applicant's ability to provide evidence; and abused his discretion by adding the criteria of providing telephone numbers for all affiants, after the applicant had applied for temporary resident status.

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)(1) 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 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, 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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he resided in the United States for the duration of the requisite period. Here, the submitted evidence is not relevant, probative, and credible.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on June 22, 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 the following addresses during the requisite period: [REDACTED], Detroit, Michigan from July 1981 to September 1983; [REDACTED] Union City, California from September 1983 to August 1987; and [REDACTED] Bakersfield, California from August 1987 to June 1989. At part #31 where applicants were asked to list all affiliations or associations, clubs, organizations, churches, unions, businesses, et cetera., the applicant stated, “None.” At part #33 where applicants were asked to list all employment in the United States since entry, the applicant indicated he was self-employed throughout the requisite period.

The applicant provided multiple documents in support of his application for temporary residence. The documents that relate to the requisite period include affidavits, declarations, copies of stamped envelopes, receipts, copies of bank letters, and tax returns.

The applicant submitted multiple declarations and affidavits that fail to specifically confirm the applicant resided in the United States during the requisite period. These include the declarations from [REDACTED] dated June 7, 2005 and December 9, 2005; the declarations from [REDACTED]; and the affidavit from [REDACTED].

The applicant also submitted a declaration from [REDACTED]. In his declaration, [REDACTED] stated that he has known the applicant since childhood, when they were neighbors in India. The declaration states that the applicant stayed with the declarant at [REDACTED] in Detroit, Michigan from July 1981 to September 21, 1983, when the applicant left for California. The declarant stated that he drove the applicant to the Detroit airport and saw the applicant off for San Francisco on September 21, 1983. Although not required, the declarant failed to provide documentation of his identity or presence in the United States during the requisite period.

The applicant provided an affidavit from his mother, [REDACTED]. The affidavit confirms that the applicant, who was living in the United States, came to visit the affiant in India on or about July 23 or 24, 1987. This affidavit fails to confirm the applicant resided in the United States during the requisite period, except for the period immediately prior to July 23 or 24, 1987.

The applicant also provided an affidavit from [REDACTED] dated July 5, 1990. The declarant stated that he has known the applicant for five years. He also stated that he dropped the applicant off at the airport on July 19, 1987 and picked the applicant up from the airport on August 25, 1987 when the applicant returned from India. Since the declaration indicates the declarant currently resides in California, the declaration tends to show the declarant drove the applicant to and from the airport in California. However, this affidavit fails to confirm the applicant resided in the United States at any time other than immediately prior to and immediately following the applicant's trip to India in July and August of 1987.

The applicant submitted a form declaration from [REDACTED] dated only, "April 24." The declarant stated that she has personal knowledge that the applicant has resided in the United States since July 1981 and returned to India on July 19, 1987. The declarant failed to describe how and when he or she first met the applicant, the nature of their relationship, the location where the applicant lived in the United States during the requisite period, or the frequency of his or her contact with the applicant. As a result, this declaration is found to lack sufficient detail.

The applicant included copies of two letters addressed to him from Sikh Temple Stockton, Inc., dated August 26, 1985 and March 10, 1986. The August 26, 1985 letter indicates the applicant had provided a monetary contribution to the Temple, and the March 10, 1986 letter indicates the applicant was a member of the temple. This information is inconsistent with the information on the applicant's Form I-687 application, where the applicant failed to list the temple when asked to list all affiliations or associations. This inconsistency calls into question whether the applicant actually received correspondence from the temple during the requisite period, casts doubt on the credibility

of the letters, and detracts from their value as evidence of the applicant's residence in the United States during the requisite period.

The applicant provided a declaration from [REDACTED], manager at [REDACTED] dated July 27, 1985. [REDACTED] stated that the applicant was registered with the [REDACTED] firm as an independent painter from January 19, 1984 to the present time. The declarant also stated that the applicant resided at [REDACTED] in Union City, California. Lastly, the declarant stated that the applicant performed work at various sites, he was an excellent painter, and no complaint had ever been made against the applicant's work. This declaration fails to provide details including the applicant's address during his period of registration, the origin of the information being attested to, whether any records exist of the applicant's registration, the location of the records, and whether CIS may have access to these records. Lack of such details is especially significant since the declarant asserted that there were no complaints against the applicant, yet the declarant failed to explain how he was able to determine no complaints had been made. Therefore, this declaration is found to lack sufficient detail.

The applicant provided photocopies of multiple envelopes containing postage cancellation date stamps. Copies of envelopes were provided that appeared to contain the following date stamps: February 10, 1982; April 4, 1984; October 31, 1984; and February 21, 1986. These envelopes tend to show the applicant was present in the United States during the time surrounding each stamp date. Four of the date stamps were illegible.

The applicant provided copies of Form 1040 Individual Income Tax Returns for himself for 1982 and 1985. The applicant failed to provide documentation that the tax returns were actually submitted during the requisite period. In addition, the tax returns do not indicate whether the applicant resided in the United States for the duration of 1982 and 1985. Lastly, the fact that the applicant stated on Form I-687 that he was self-employed throughout the requisite period yet provided returns for only 1982 and 1985 casts some doubt on his claim to have resided in the United States throughout the requisite period.

The applicant submitted a copy of a receipt from GranTree Furniture Rental dated September 17, 1987. This receipt does not include the applicant's address. Therefore, it does not confirm the applicant resided in the United States during the requisite period.

The applicant provided a copy of a letter sent to him in response to his application for an account with The Broadway Service Building dated March 17, 1988. He also provided a copy of a similar letter from Wells Fargo Bank dated March 12, 1988. These letters indicate the applicant resided in the United States during March 1988.

In denying the application the director noted 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. The director found 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 for the applicant asserted that the director failed to consider the quality of evidence provided by the applicant; failed to consider the effect of the passage of time on the applicant's ability to provide evidence; and abused his discretion by adding the criteria of providing telephone numbers for all affiants, after the applicant had applied for temporary resident status.

In summary, the applicant has provided contemporaneous evidence and declarations in an attempt to establish his residence in the United States during the requisite period. However, flaws exist in the evidence that detract from its value in confirming the applicant resided in the United States throughout the requisite period. The affidavits and declarations from [REDACTED]

[REDACTED] and [REDACTED] and the receipt from GranTree Furniture Rental all fail to confirm the applicant resided in the United States during the requisite period. The declarations from [REDACTED] and [REDACTED] lack sufficient detail. The letters from Sikh Temple Stockton, Inc. conflict with the information provided on the Form I-687. The affidavit from [REDACTED] only indicates the applicant resided in the United States immediately prior to July 23 or 24, 1987. The affidavit from [REDACTED] only indicates the applicant resided in the United States immediately prior to July 1987 and immediately following August 1987. The stamped envelopes only tend to show the applicant was in the United States immediately surrounding the following dates: February 10, 1982; April 4, 1984; October 31, 1984; and February 21, 1986. The bank letters from March 1988 indicate only that the applicant resided in the United States during this month. The Forms 1040 from 1982 and 1985 tend to indicate the applicant resided in the United States for some part of 1982 and 1985. However, since the applicant stated on his Form I-687 that he was self-employed throughout the requisite period, his lack of tax returns for the other years casts some doubt on his claim of continuous residence in the United States throughout the requisite period. The declaration from [REDACTED] indicates the applicant resided in the United States from July 1981 to September 21, 1983. The applicant provided no credible evidence of his residence for approximately two-and-one-half years of the requisite period. Specifically, he provided no credible evidence of his residence from September 22, 1983 to March 31, 1984; from May 1, 1984 to September 30, 1984; from November 1, 1984 to December 31, 1984; and from March 1, 1986 to August 25, 1987.

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 contradictions between the applicant's statements on his application and the documents he submitted, the applicant's reliance upon documents whose probative value does not outweigh the doubt cast on other evidence, and the applicant's failure to produce credible evidence of his residence for more than two-and-one-half years of the requisite

period, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States for the requisite period 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.