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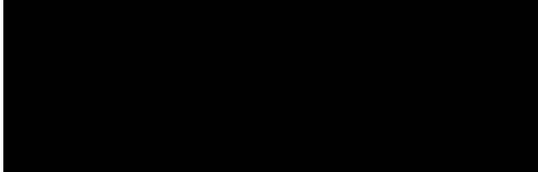
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
MSC 04 276 10030

Office: NATIONAL BENEFITS CENTER

Date: JUL 01 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. 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.

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, National Benefits Center. The appeal will be dismissed.

The district director denied the application because the applicant failed to demonstrate credibly that he entered the United States before January 1, 1982, and thereafter resided in the United States in a continuous unlawful status.

On appeal, counsel asserted that the director failed to adequately consider all of the evidence. More specifically, counsel argued that the district director had failed to accord adequate weight to the acquaintance affidavits submitted.

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 Immigration and Nationality Act (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).

As to the requirement of continuous residence in the United States from January 1, 1982 through the date the application is filed, the regulation at 8 C.F.R. § 245a.2(h)(1) provides that an applicant shall be regarded as having resided continuously if no single absence during the salient period was longer than 45 days and the aggregate of all absences does not exceed 180 days.

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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.2(d)(6).

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 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 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.

On the Form I-687 application, the applicant stated, at item 30, that he lived (1) at a Sikh temple in Yuba City, California from November 1981 to December 1981, (2) at [REDACTED] also in Yuba City, from January 1982 to February 1984, (3) at [REDACTED], in Falls Church, Virginia, from February 1984 to May 1987, and (4) at [REDACTED] in San Jose, California, from June 1987 to November 1990.

Based on a search of Falls Church street names, this office believe that the applicant meant to state that from February 1984 to May 1987 he lived on [REDACTED] in Falls Church. This office notes that typically a person who lived at an address for more than three years would be able to give a more accurate rendering of the street name.

The applicant provided additional addresses where he alleges that he lived after the end of the period of requisite residence in the United States. Although that additional residential history is not directly relevant to the applicant's claim of continuous residence during the requisite period, this office notes that the applicant also stated that he lived (5) at [REDACTED] in Morgan Hill, California, from November 1990 to December 1990, (6) at [REDACTED] in Manassas, Virginia, from December 1990 to June 1997, and (7) at [REDACTED], in Falls Church, Virginia, from June 1997 until the applicant signed the application on June 26, 2004.

The applicant stated at item 32 of his application that he visited Canada from June 1987 to July 1987. The applicant listed other absences after the end of the period or requisite residence, but no other absences during the requisite period.

The pertinent evidence in the record is described below.

- The record contains two nearly identical affidavits, both dated August 10, 2001, from [REDACTED] of Sterling, Virginia, and [REDACTED] of Fredericksburg, Virginia. The affiants stated that, to the best of their knowledge, they have known the applicant since 1980. They did not, however, state where the applicant then lived. Because the applicant claims to have first lived in the United States during November of 1981, however, that acquaintance, if it occurred in the United States, contradicts the applicant's own statement of his entry into the United States. Further, the applicant stated that when he first came to the United States he lived in Yuba City, California, whereas the two affiants both live in Northern Virginia. The affiants did not detail how they came to meet the applicant, or were aware of his presence in the United States, prior to February 1984, when the applicant claims to have moved to Northern Virginia.

The affiants further stated that the applicant left the United States from July 26, 1994 to October 12, 1994, and that the applicant has, since then, never left the United States. This office notes that the absence related occurred after the end of the period of requisite residence. The affidavits do not indicate whether, or when, the applicant may have been absent during the requisite period. Because those affidavits do not list the 1987 absence that the applicant listed on the Form I-687 application, this office finds reason to believe that the list of absences on those affidavits may be inaccurate.

The affidavits of [REDACTED] and [REDACTED], if taken to assert residence in the United States since 1980, conflict with the applicant's assertion of his own residential history. Further, they appear not to provide an accurate list of the applicant's absences from the United States since his initial entry. For both reasons, they are of no evidentiary value in showing that the applicant continuously resided in the United States during the requisite period.

Further, doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application, and the applicant must resolve any inconsistencies in the record with competent, independent, objective evidence. Attempts to explain or reconcile inconsistencies, absent competent objective evidence sufficient to demonstrate where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (Comm. 1988). The apparent contradiction between these twin affidavits and the applicant's reported residential history detracts from the credibility not only of this particular item of evidence, but from the credibility of all of the evidence in the record and all of the applicant's assertions.

- The record contains a fill-in-the-blanks "Affidavit of Co Habitation" (sic) from [REDACTED] [REDACTED], dated September 27, 1990. The affiant states that, to the best of his knowledge, he and the applicant lived together in Yuba City, California from January 1982 to February 1984. That affidavit, standing alone, is accorded only moderate evidentiary weight.

- The record contains a form affidavit, also executed by [REDACTED]. Although the affiant dated the form September 25, 1990, a notary indicated that it was subscribed and sworn before her on September 27, 1990. That discrepancy has not been explained. The affiant stated that the applicant went to Canada on June 17, 1987 and returned to the United States on July 11, 1987, but without stating the basis for this asserted knowledge. This affidavit conflicts with the August 10, 2001 affidavits of [REDACTED] and [REDACTED] which did not report any absences during the requisite period.

The discrepancy pertinent to the date on which the affiant executed that affidavit and the conflict between it and the affidavits of [REDACTED] and [REDACTED] cause the affidavit of Mr. [REDACTED] to have no evidentiary value.

The record contains a May 14, 2005 affidavit from [REDACTED] of Yuba City, California. In it, the affiant states that he first met the applicant at the Sikh temple in Yuba City on December 15, 1981. The affiant did not indicate how he was able to pinpoint the date so precisely. That affidavit, standing alone, is accorded only slight evidentiary value.

- The record contains a statement, dated May 20, 2005, from [REDACTED] of Mechanicsville, Virginia. He stated that he met the applicant during 1986, that they became friends, and that they are in frequent contact, without further characterizing the frequency or type of contact. That document contains a notary's seal, but the notary did not indicate that she administered an oath to [REDACTED] or that he signed the document in her presence. The significance of that notary's seal is unknown to this office, but, absent oath or affirmation, it does not appear to qualify the statement as an affidavit. That statement, standing alone, would be accorded only very slight evidentiary value and only for the proposition that the applicant has been in the United States since 1986.
- The record contains an affidavit dated May 14, 2005 from [REDACTED] of Sacramento, California. Mr. [REDACTED] asserted that, to the best of his knowledge and belief, the applicant lived with him at "[REDACTED]" in Falls Church from February 1987 to May 1995.

This office believes that the affiant meant to refer to Random Run Lane in Falls Church. Again, this office notes that, typically, a person claiming to have lived at a given address for such an extended period of time, more than eight years, should be able to provide a more accurate rendering of the street name.

Further that affidavit was not accompanied by any evidence that the affiant lived in Virginia during the period when he claims that the applicant lived with him there. Further still, this office notes that the applicant claimed, on the Form I-687 application, to have lived at [REDACTED] from February 1984 to May 1987, to have lived in San Jose, California from June 1987 to November 1990, to have lived in Morgan Hill, California from November 1990 to December 1990, and to have lived at [REDACTED], in Manassass, Virginia, from December 1990 to June 1997. Because the affiant could not accurately provide the

name of the street he claims to have lived on for more than eight years, and because the affidavit directly contradicts the applicant's own account of his residential history, it will be accorded no evidentiary value.

Further, that the applicant submitted evidence that directly contradicts his own assertions casts doubt not only on that particular item of evidence, but on all of the evidence in the record, and all of the applicant's assertions, pursuant *Matter of Ho*, 19 I&N Dec. 582. Even those items of evidence that, standing alone, had some evidentiary value, are subject to additional suspicion and additional scrutiny, and will be accorded even less credibility than they would have been if they were standing alone.

- The record contains a form affidavit, dated May 2, 2005, from [REDACTED] of Fredericksburg, Virginia. Mr. [REDACTED] stated that he is the applicant's brother, and that he is aware that the applicant resided in the United States from 1985 to 1987 because the applicant lived with him during those years. Although the applicant's brother would likely have been aware of the applicant's general location from 1981 to 1984, he did not indicate that the applicant was then in the United States. Standing alone, that affidavit would be moderately convincing evidence that the applicant resided in the United States from 1985 through 1987. The lack of any reference to the applicant's location from 1981 to 1984, however, is moderately convincing evidence that the applicant was not, in fact, in the United States during those years.
- The record contains an affidavit dated November 3, 2007 from [REDACTED] of Leesburg, Virginia. Mr. [REDACTED] states that he first met the applicant during December 1981 when the applicant was living in the Sikh Khalsa in Yuba City. Mr. [REDACTED] further stated that the applicant subsequently moved to [REDACTED] in Yuba City and then, after February 1984, to Virginia. Mr. [REDACTED] stated that he, himself, moved to Virginia in 1985. Mr. [REDACTED] stated that the applicant was in Canada from June 24, 1987 to July 7, 1987, but did not state the basis for this asserted knowledge or state that the applicant was not absent from the United States during any other period since his entry into the United States.

The affiant further stated, "I took him to my friend's house also located at [REDACTED], New Vark CA 94566." This office notes that New Vark, California does not exist. The zip code 94566 corresponds to Pleasanton, California, which does not have a street named Broadway. A [REDACTED] exists in Bronx, New York, but not, of course, at the same zip code as Pleasanton, California. Although the affiant's friend's address is not, in itself, material, this obvious error demonstrates that the affidavit provided is, in at least that one respect, inaccurate.

Further, the signature on this affidavit clearly matches the signature of [REDACTED] on the August 10, 2001 affidavit, indicating that they are the same person. On the 2001 affidavit Mr. [REDACTED] stated that he met the applicant during 1980. On the instant affidavit he stated that he met the applicant during December 1981, without explaining that discrepancy.

Because of the non-existent address provided for a friend to whom he introduced the applicant, and because of the discrepancy between his two affidavits, [REDACTED] November 3, 2007 affidavit is accorded no evidentiary value. Further, this discrepancy detracts yet further from the credibility of all of the other evidence in the record, especially [REDACTED]'s previous affidavit, and all of the applicant's assertions.

- The record contains a previous Form I-687 application which the applicant executed on September 25, 1990. The applicant was required, on that form, to provide an exhaustive list of all immediate relatives, including spouse, former spouses, children, and siblings. On that application the applicant stated that he has three children, [REDACTED] and [REDACTED] all born in India, but did not state their birth dates in the spaces provided for that purpose. The applicant listed one brother, [REDACTED]. The applicant did not list [REDACTED], who stated, in the May 2, 2005 described above, that he is the applicant's brother. This additional discrepancy renders all of the evidence in the record yet less credible, especially the affidavit of [REDACTED], and also renders all of the applicant's assertions yet more suspect.
- The record contains a Form I-485 Application to Adjust Status that the applicant executed on July 30, 2001 and submitted on August 31, 2001. On that application the applicant again asserted that he has three children, [REDACTED] and [REDACTED], all born in India. Again, the applicant did not provide his children's birth dates in the spaces provided.
- The record contains a Form I-589 Request for Asylum that the applicant executed on December 8, 1993 and submitted on January 11, 1994. On that form the applicant stated that his children [REDACTED] and [REDACTED] were born, both in Punjab, India, on September 8, 1985, and February 14, 1989, respectively. This office notes that the applicant's siring those children who were subsequently born in India appears to conflict with the applicant's claim of continuous residence in the United States during the requisite period, as modified by his asserted history of only one brief trip, to Canada, from June 1987 to July 1987, during the requisite period.¹

The discrepancy between the two assertions of the applicant, first, that he never returned to India during the period of requisite residence in the United States, and, second, that he had children born to him in Punjab on September 8, 1985 and February 14, 1989, casts additional doubt on all of the evidence in the record and on all of the applicant's assertions.

- The record contains a notice of intent to deny the applicant's request for asylum in the United States. The notice, dated August 19, 1994, relates that the basis of the applicant's claim was that he was subjected to frequent and violent detentions by the authorities in India while he was living there during 1985 and 1986, and that he subsequently fled, during May 1987, to avoid that persecution. This claim directly contradicts the applicant's assertion, on the

¹ The record contains no evidence that the applicant's wife visited him in either the United States or Canada.

instant application, that he has continuously resided in the United States since before January 1, 1982.

The record contains no other evidence pertinent to the applicant's residence in the United States during the salient period.

In a Notice of Intent to Deny (NOID), dated October 14, 2005, the director stated that the applicant failed to submit evidence sufficient to demonstrate his entry into the United States prior to January 1, 1982, and his continuous residence in the United States during the requisite period.

In response counsel submitted the affidavit of [REDACTED] which is accorded no evidentiary value for the reasons described above. In the Notice of Decision, dated September 26, 2006, the director denied the application based on the reasons stated in the NOID.

On appeal, counsel noted that the applicant has submitted affidavits and that other evidence was difficult to obtain because the applicant allegedly initially entered the United States without inspection. Counsel asserted that the applicant's affidavits should be accorded more weight.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate entry into the United States prior to January 1, 1982, and continuous residence during the requisite period.

The applicant has submitted some items that, considered alone, have some evidentiary weight for the proposition that the applicant resided in the United States during at least some portions of the requisite period. Those items include the September 27, 1990 affidavit of [REDACTED] the May 14, 2005 affidavit of [REDACTED], the May 20, 2005 statement of [REDACTED], and the May 2, 2005 affidavit of the applicant's brother, [REDACTED].²

The credibility of those items is destroyed, however, by the various items of evidence that conflict with each other and with the applicant's assertions. Those items are the applicant's September 25, 1990 Form I-687 application, his December 8, 1993 Form I-589 Request for Asylum, both affidavits of [REDACTED], and the May 14, 2005 affidavit of [REDACTED]. The complete lack of credibility, based on the many unreconciled discrepancies and contradictions, of the evidence submitted for the proposition that, during the requisite period, the applicant continuously resided in the United States would, in itself, be sufficient reason to deny the instant application.

Further, however, the record contains evidence that appears to directly contradict the assertion that the applicant continuously resided in the United States during the requisite period. That evidence includes the applicant's September 25, 1990 Form I-687 application, the August 19, 1994 notice of

² As was noted above, the affidavit of [REDACTED] is only evidence that the applicant resided in the United States from 1985 to 1987.

[REDACTED]

intent to deny, the July 30, 2001 Form I-485, the May 2, 2005 affidavit of the applicant's brother, [REDACTED],³ and the May 14, 2005 affidavit of [REDACTED].

The absence of credible documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, and the evidence that appears to demonstrate that he did not reside continuously in the United States continuously during that period, taken together, fail 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. The application was correctly denied on that basis, which has not been overcome on appeal. The appeal will be dismissed on that basis.

The record suggests another issue that was not addressed in the decision of denial. On a Form I-589 that the applicant signed on December 8, 1993, and that was submitted on January 11, 1994, the applicant stated, at Item 20, "I belong to [REDACTED] group." On a Form I-485 Application to Adjust Status that the applicant signed on July 30, 2001 and that was submitted to CIS on August 21, 2001, the applicant reiterated, at Part 3, Item C, "I was a member of [REDACTED] a group.

The record also contains a letter, dated April 29, 1994, from the director of the Office of Asylum Affairs of the Department of State, states that Babbar Khalsa is a known terrorist group. If that is true, and the applicant is a member of that group, then the applicant is inadmissible to the United States pursuant to section 212(a)(3)(B)(i)(V) of the Act. Because the appeal will be dismissed on another basis, however, this office need not dwell on that possible additional basis.

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

³ [REDACTED]'s affidavit, as was noted above, is evidence that the applicant did not reside in the United States from 1981 to 1984.