

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



41

FILE: [Redacted]
MSC-05-320-12255

Office: DENVER

Date: JUN 10 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:
[Redacted]

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".

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, Denver. 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 asserts that the applicant entered the United States when he was ten years old. Counsel states that the applicant has retained only a few of his records. Counsel refers to the affidavits the applicant submitted as corroborating evidence. Counsel states that the applicant has lost contact with several of the affiants. Counsel furnishes additional documentation to establish certain affiants' identity and presence in the United States during the requisite period.

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).

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 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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his 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 Supplement to Citizenship and Immigration Services (CIS) on August 16, 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 that during the requisite period he resided in Yuba City, California from September 1980 until July 1983; Santa Clara, California from July 1983 until February 1986; and San Jose, California from March 1986 until February 1989.

The applicant submitted the following documentation:

- A receipt from The Sikh Center located in El Sobrante, California, dated April 13, 1983, showing that the applicant donated \$31.00 to this center. It should be noted that the applicant was a thirteen year old child when he purportedly donated \$31.00 to The Sikh Center. The

applicant has not submitted a letter or any other evidence of his membership and/or involvement with The Sikh Center. At part #31 of the instant Form I-687 application, applicants are asked to show their affiliations or associations with any organizations. The applicant responded "none" to this part of the application. Additionally, the applicant's record shows on October 19, 1993, he submitted a Form I-687 for a determination of his CSS class membership. This applicant showed on this application that he has been affiliated or associated with a Sikh temple located in Fremont, California since 1989. The applicant again neglected to list his association with The Sikh Center on this application. Given these numerous discrepancies, this document is of little probative value as evidence of the applicant's residence in the United States on April 13, 1983.

- A receipt from [REDACTED]'s Auto Parts, dated January 7, 1988. This receipt does not bear the applicant's name or address. Hence, it does not contain any information that would serve to link it to the applicant. Therefore, this document does not have any probative value as evidence of the applicant's residence in the United States on January 7, 1988.
- Identical fill-in-the-blank affidavits from [REDACTED], dated May 4, 1990, and [REDACTED] dated April 4, 1990. The affidavits show the applicant's residential addresses during the requisite period and indicate that each affiant has personal knowledge of the applicant's residence at these addresses. The affidavits lack significant detail on how the affiants became acquainted with the applicant and their subsequent relationship. Moreover, the affidavits are inconsistent with the applicant's Form I-687 application. The affidavits request the affiants to state the longest period they have not seen the applicant. Both of the affiants responded that they have seen the applicant at all times. However, the applicant's Form I-687 application shows that he was in India during the month of July 1987. It is reasonable to expect the affiants to know this information since they claim that the applicant is their best friend. Due to these deficiencies, these affidavits are of little probative value as evidence of the applicant's continuous residence in the United States during the requisite period.
- An affidavit from [REDACTED], dated May 24, 1990, notarized May 30, 1990. The affidavit provides, "I personally know [REDACTED] since 1981 and I have knowledge of his absence from [sic] USA when he went to India for [sic] family visit during the month of July, 1987." This affidavit contains several apparent deficiencies. The affidavit does not provide any information on how [REDACTED] became acquainted with the applicant. Notably, there is no indication that [REDACTED] first met the applicant in the United States. In addition, the affidavit does not provide any information on [REDACTED]'s relationship with the applicant during the requisite period. As a result, this affidavit does not establish [REDACTED]'s direct personal knowledge of the applicant's residence in the United States during the requisite period. Therefore, this affidavit is of little probative value as evidence of the applicant's residence in the United States during the requisite period.
- An affidavit from [REDACTED], dated January 14, 2003. This affidavit shows the applicant's residential addresses during the requisite period. The affidavit states that Mr.

██████████ has given "food and lodging" to the applicant since his arrival in the United States in October 1980. The affidavit lists ██████████'s current address as ██████████ El Sobrante, California. The applicant's Form I-687 application shows that he resided at this address from January 2002 until May 2005. However, these dates are outside the requisite period of residence. Therefore, this affidavit is of little probative value as evidence of the applicant's continuous residence in the United States during the requisite period.

- An affidavit from ██████████, dated January 13, 2003. This affidavit states, "I, ██████████, used to be a priest in 1985 at the Sikh Center located on ██████████ in El Sobrante, CA 94803. . . . I hereby certify that ██████████ was an active member of our Sikh Center and attended the prayer sessions almost every Sunday." This letter fails to provide the dates that the applicant was an active member of the Sikh Center. Therefore, this affidavit is without any probative value as evidence of the applicant's continuous residence in the United States during the requisite period.

The applicant's record contains a Form I-687 application he filed on October 4, 2004. This application was withdrawn by the applicant on May 25, 2005. The applicant submitted with this application the aforementioned supporting documentation as well as additional affidavits from ██████████ and ██████████

The fill-in-the-blank affidavit from ██████████, dated October 18, 1993, states that to his personal knowledge the applicant resided at ██████████ Fremont, California from February 1981 until present. This affidavit is inconsistent with the applicant's Form I-687 application. The application shows that during the requisite period, the applicant resided in Yuba City, California from September 1980 until July 1983; Santa Clara, California from July 1983 until February 1986; and San Jose, California from March 1986 until February 1989. The applicant listed his address at ██████████, Fremont, California as February 1989 until January 1997. Given this significant inconsistency, this affidavit is without any probative value as evidence of the applicant's continuous residence in the United States during the requisite period.

The fill-in-the-blank affidavit from ██████████, dated October 18, 1993, states that to his personal knowledge the applicant resided in Ripon, California from March 1982 until present. This affidavit is also inconsistent with the applicant's Form I-687 application. As stated above, the application shows that during the requisite period, the applicant resided in Yuba City, California from September 1980 until July 1983; Santa Clara, California from July 1983 until February 1986; and San Jose, California from March 1986 until February 1989. Given this significant inconsistency, this affidavit is without any probative value as evidence of the applicant's continuous residence in the United States during the requisite period.

The applicant's record shows that on February 12, 2002, he filed a Form I-485, Application to Adjust Status, pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act. The applicant submitted with this application several of the aforementioned documents and an

affidavit from [REDACTED], dated January 24, 1991. This affidavit states that the applicant resided at [REDACTED], Fremont, California from September 1983 until November 1983. Again, this affidavit is also inconsistent with the applicant's Form I-687 application. The application shows that during the requisite period, the applicant resided in Yuba City, California from September 1980 until July 1983; Santa Clara, California from July 1983 until February 1986; and San Jose, California from March 1986 until February 1989. Given this significant inconsistency, this affidavit is without any probative value as evidence of the applicant's continuous residence in the United States during the requisite period.

The applicant's record shows that on October 19, 1993, he submitted a Form I-687 application for a determination of his class membership in *Catholic Social Services v. Reno*. The applicant submitted with this application a letter from [REDACTED] Chairman, [REDACTED], a affidavit from [REDACTED] and an aerogramme from India.

The letter from [REDACTED] states, "[REDACTED] has been seen at Gurdwara Shaib attending the Religious Ceremonies since 1983." The regulations at 8 C.F.R. § 245a.2(d)(3)(v) provide that attestations from religious organizations should state the address where the applicant resided during the membership period; establish how the author knows the applicant; and establish the origin of the information being attested to. Since this letter fails to follow these delineated guidelines, it is of little probative value as evidence of the applicant's residence in the United States during the requisite period.

The affidavit from [REDACTED] dated August 3, 1990, states, "[REDACTED] is [sic] son of my friend and he came to [sic] United States in October, 80 [sic]. [REDACTED] has been living with me since 1980 and I have been supporting him for his [sic] all kind of expenses." The affidavit indicates that the applicant has resided with [REDACTED] since 1980. However it neglects to corroborate this assertion with credible details. The affidavit lists [REDACTED]'s address as [REDACTED] Fremont, California. The applicant's Form I-687 application shows that he resided at this address from February 1989 until January 1997. The affidavit offers no other information to corroborate the applicant's residence with [REDACTED] during the requisite period. Therefore, this affidavit is without any probative value as evidence of the applicant's continuous residence in the United States during the requisite period.

The aerogramme from India is postmarked November 9, 1985. It is addressed to the applicant at [REDACTED] Santa Clara, California. The applicant's Form I-687 application shows that he resided at this address from July 1983 until February 1986. The postage stamp on the aerogramme shows that it was mailed from the Nagpur General Post Office, India. The aerogramme bears Indian postage stamps. One of the postage stamps has a value of 40 paise and depicts a telecommunications tower. This stamp is listed at page 812 of the *2006 Scott Standard Postage Stamp Catalogue* and as catalogue number 912 A578a. The catalogue lists the stamp's date of issue as October 15, 1988. Therefore, the aerogramme, postmarked November 9, 1985, bears a stamp that was not issued until after the date of the postmark. Given this significant

inconsistency, it does not have any probative value and credibility as evidence of the applicant's residence in the United States in November 1985.

On August 28, 2006, the director issued a notice of denial. In denying the application the director determined that the applicant failed to establish that he was turned away from filing a Form I-687 application during the original legalization application period. The director further determined that the applicant failed to submit sufficient evidence of his eligibility for temporary resident status. The director noted that the applicant was ten years old on the date he purportedly entered the United States. The director found that during the applicant's interview, he gave inconsistent testimony regarding his school attendance. The director noted that on April 21, 1998, the applicant had an adjustment of status interview based on an underlying Form I-130, Petition for Alien Relative. The director found that during this interview the applicant gave testimony regarding his residence that is inconsistent with the instant application. In regarding to the supporting affidavits, the director determined that the affiants failed to provide evidence of their own continuous residence in the United States during the requisite period and proof of their identity. The director concluded that the applicant failed to meet his burden of proof in this proceeding.

On appeal, counsel for the applicant asserts that the applicant entered the United States when he was ten years old. Counsel states that the applicant has retained only a few of his records. Counsel refers to the affidavits the applicant submitted as corroborating evidence. Counsel states that the applicant has lost contact with several of the affiants. Counsel furnishes the following additional documentation:

A typed receipt from Orchard Supply Hardware located in Sunnyvale California, dated August 20, 1983, issued to the applicant when he was thirteen years old. The applicant's name is hand printed at the top of this receipt. The receipt does not contain any information that would serve to link it to the applicant. The receipt shows that \$234.25 was charged on a MasterCard or Visa. It is unlikely that the applicant, at the age of thirteen, would have a credit card. Therefore, this document is without any probative value and credibility as evidence of the applicant's residence in the United States in August 1983.

- A list of phone numbers for the following persons: [REDACTED] and [REDACTED] (who is now deceased).
- Copies of the following identity documents: a International Certificate of Vaccinations showing that [REDACTED] received vaccinations at the Kaiser Medical Center in Vallejo, California in July 1986 and August 1986; [REDACTED]'s California Driver's License and Permanent Resident Card, showing that he has been a United States permanent resident since September 18, 1976; [REDACTED]'s Indian Passport showing that he was admitted to the United States on August 2, 1975; and the Nevada Marriage Certificate of [REDACTED] showing his presence in the United States on April 5, 1982.

The evidence submitted on appeal fails to overcome the numerous deficiencies in the totality of the applicant's evidence. The applicant submitted on appeal a receipt without any probative value and certain affiants' phone numbers and identity documents. These documents do not overcome the numerous discrepancies in the applicant's evidence. The applicant's evidence contains inconsistencies that undermine his own credibility as well as the credibility of his claim of continuous residence in the United States for the requisite period. 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. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). The applicant's failure to submit credible documentation renders a finding that he has not satisfied his burden of proof in this proceeding.

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 the applicant 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.

Lastly, the applicant's record reveals that on December 4, 2005 he was arrested in Rawlins, Wyoming and charged with *Driving Under the Influence* in violation of section 10.48.150 of the Rawlins Municipal Code. The punishment for a first violation of this statute is imprisonment for not more than six months. Rawlins Mun. Code § 10.48.150 (2008). The applicant's record contains a court disposition that shows on December 12, 2005 he was convicted of this offense and received a suspended sentence of seven days imprisonment and six months probation. Under section 245A(a)(4) of the Act, 8 U.S.C. § 1255a(a)(4), an applicant must establish that he has not been convicted of any felony or three or more misdemeanors committed in the United States. Pursuant 8 C.F.R. § 245a.1(o), a conviction for this offense is classified as a misdemeanor. Hence, this misdemeanor conviction does not make the applicant statutorily ineligible for temporary resident status under section 245A(a)(4) of the Act, 8 U.S.C. § 1255a(a)(4).

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