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FILE: [REDACTED]  
MSC 04 281 10215

Office: LOS ANGELES

Date: JUN 18 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, Los Angeles, and 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 made note of various discrepancies between information provided by the applicant in his two Form I-687 applications and further indicated that a number of the affidavits submitted in support of the applicant's claim lacked probative value. 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 disputes the director's conclusion, specifically addressing one of the director's adverse findings with regard to an inconsistency regarding the applicant's past employment. Counsel also submits a brief asserting that the director failed to give sufficient weight to the applicant's oral testimony.

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 until the date of filing the application. 8 C.F.R. § 245a.2(b)(1).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and presence in accordance with the regulation at 8 C.F.R. § 245a.2(b), "until the date of filing" shall mean until the date the alien attempted to file a completed Form I-687 application and fee or was caused not to timely file 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.* 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 during the requisite time period. In the present matter, the applicant has not met this burden.

The record shows that prior to filing the Form I-687 that is adjudicated in the present matter, the applicant had completed another Form I-687, which was signed by the applicant and dated March 21, 1990, and subsequently filed a Form I-485 seeking permanent resident status under the Legalization Immigration Family Unity (LIFE) Act. Although the latter application has already been denied and the appeal from that denial has been dismissed, the AAO's decision will reflect its comprehensive review of all the documentation submitted in support of all three applications. The record includes the following documentation in support of the applicant's claim of continuous residence in the United States during the relevant time period:

1. Two identical affidavits dated December 2, 2002 from [REDACTED] and [REDACTED]. Both affiants provided the applicant current residential address, claimed that they had each met the applicant in October 1981, and further stated that they and the applicant visited one another's homes regularly. However, neither affiant provided information about any specific events or circumstances that are relevant to establishing the applicant's residence in the United States during the statutory time period.
2. An affidavits dated March 4, 2003 and March 5, 2003 from [REDACTED] and [REDACTED], respectively. [REDACTED] claimed that he first became acquainted with the applicant October 1981 and [REDACTED] claimed to have met the applicant in June 1984. Both

affiants claimed that the applicant was working as a painter in the construction industry when they each met him. However, this claim is not confirmed by any of the information provided by the applicant in his most recent form I-687 and is inconsistent with the applicant's earlier Form I-687 where he indicated that he was self-employed in sales during the statutory time period, the specific dates of which were not provided in the application. Both affiants also discussed having met the applicant many times at a Sikh temple located at 1966 N. Vermont, Los Angeles, California and another temple located in Alhambra, California. However, the information provided in these affidavits is general, and no references were made by either affiant to specific events or circumstances that are relevant to establishing the applicant's residence in the United States during the statutory time period.

3. A letter dated March 6, 2003 from [REDACTED], who identified himself as president and chairman of Sikh Study, Inc. It is noted that the letterhead used for [REDACTED] letter belonged to the organization titled, "Sikh Temple Los Angeles Sikh Study Circle, Inc.," located at 1966 N. Vermont Ave., Los Angeles, California. [REDACTED] provided the applicant's current residential address and stated that the applicant is a member of the named temple and has volunteered his services in the free food kitchen. However, this letter does not meet the requirements listed in 8 C.F.R. § 245a.2(d)(3)(v), which applies to attestations from churches and other organizations. Namely, [REDACTED] failed to include the dates of the applicant's residence, the applicant's residential address during the period of his membership (particularly within the statutory period), and an explanation stating how Mr. [REDACTED] knows the applicant, and the origin of the information provided.
4. Three affidavits dated February 21, 2006 from [REDACTED] and [REDACTED], [REDACTED], and [REDACTED]. [REDACTED] and [REDACTED] claimed that they knew the applicant since their respective residences in India and claimed that the applicant entered the United States by crossing the Mexican border on foot. However, both individuals claimed that the applicant provided them with this information, thereby indicating that this information was not obtained by their own first-hand knowledge of the applicant's entry. As such, neither individual had the capacity to attest to any facts related to the applicant's actual entry into the United States. Additionally, all three affiants provided the applicant's residential address from October 1981 to April 1990, even though [REDACTED] and [REDACTED] both claimed to have known of the applicant's presence in the United States since November 1981. Lastly, while two of the affiants provided general statements claiming that they met with the applicant at various religious and social gatherings, none of the affiants discussed specific events or circumstances that are relevant to establishing the applicant's residence in the United States during the statutory time period.

Given the inconsistencies and deficiencies in each of the affidavits and written statements from third parties as discussed above, each of them can be afforded only minimal weight as evidence of the applicant's residence in the United States during the statutory period.

On March 13, 2006, the director issued a decision denying the applicant's Form I-687 application. The director noted the information provided by the applicant during his February 22, 2006 interview during which the applicant claimed that he departed and remained outside of the United States from November 1987 to January 1988, which falls within the statutory period. The director also noted a discrepancy between the employment information provided by the applicant at his interview and the information he provided in each of his Form I-687s. Specifically, at the interview, the applicant first stated that he was first employed as a handyman and subsequently claimed that his initial employment in the United States was loading and unloading luggage. Neither of these statements is consistent with No. 36 of the earlier Form I-687, where the applicant claimed that he was self-employed in "sales," although the date of such employment was not provided.

On appeal, counsel asserts that the applicant never claimed to have worked in sales. However, counsel's argument is directly challenged by the evidence on record. While the applicant's most recently filed Form I-687 only shows that the applicant was self-employed during the statutory period, the earlier Form I-687 shows sales as the applicant's only employment in the United States. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Counsel also refers to a service memorandum, which instructs the approval of any application where the supporting affidavits are credible, verifiable, and sufficient to establish the facts at issue. However, aside from the fact that counsel does not specify or provide a copy of the specific memorandum, service policy memorandum is not binding on Citizenship and Immigration Services (CIS) employees. Furthermore, the AAO specifically addressed each supporting document and explained why each one lacked probative value and did not in fact establish the facts at issue, i.e., the applicant's unlawful residence in the United States during the statutorily relevant time period. As such, even if the quoted policy memorandum was binding on CIS, counsel has failed to establish that the director failed to comply with the specific policies cited therein.

Further, counsel stresses that the applicant's statements during oral interview should be given great evidentiary weight. In the present matter, however, the applicant did not supplement the responses he provided on his application. Rather, the employment information he provided at his interview only showed inconsistencies with regard to this subject matter.

Lastly, with regard to counsel's argument that the passage of time may preclude applicants from providing extensive documentation, no applicant is exempt from the burden of establishing his claimed unlawful residence within the statutory period by providing probative and credible evidence. As discussed above, the applicant in the present matter has not met this burden.

The absence of sufficiently detailed supporting documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of this claim. As stated above, 8 C.F.R. § 245a.2(d)(5) states that 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 applicant's contradictory statements on his applications and his reliance upon documents with minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through 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-*, 20 I&N Dec. 77. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis.

Additionally, an alien shall be regarded as having resided continuously in the United States if at the time of filing an application for temporary resident status, no single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, through the date the application is filed, unless the alien can establish that due to emergent reasons the return to the United States could not be accomplished within the time period allowed, the alien was maintaining residence in the United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.1(c).

While not specifically addressed in the director's decision, the applicant in the present matter has provided information that indicates a prolonged absence from the United States. Specifically, No. 32 of the recently filed Form I-687 and No. 35 of the earlier Form I-687 both show that the applicant departed the United States in November 1987 and returned to the United States in 1988, which suggests an absence that is longer than the time period specified in 8 C.F.R. § 245a.1(c). The applicant indicated that the reason for his absence was to visit family, which cannot be deemed an emergent reason. Therefore, even if the applicant were to have successfully established his entry into the United States since prior to January 1, 1982, his prolonged absence would have interrupted the continuous residence he may have accrued prior to that absence.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

Accordingly, the applicant is ineligible for temporary resident status on the basis of the additional ground discussed above.

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