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[REDACTED]

FILE: [REDACTED] Office: SAN FRANCISCO Date: JUN 19 2008
MSC-06-007-11360

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. 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.

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, Fresno field office (San Francisco). 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, on October 7, 2005. 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. Specifically, the director noted that the evidence offered in his asylum proceedings indicated that the applicant resided in India until 1986. 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.

The applicant represents himself on the appeal of the denial of his application for temporary residence. The applicant asserts that the information contained in his asylum application is true. However, the applicant asserts that he “did enter the United States before 1982 and stayed here.” The applicant claims that he then returned to India and reentered the United States “when [his] life was in danger there.”

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). 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 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 (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. In this case, the applicant has provided no documentary evidence other than his own statement that he initially entered the United States prior to 1982 and remained here in an unlawful status during the requisite period of time.

The AAO will first examine the information contained in the Application for Status as a Temporary Residence (Form I-687). The applicant states therein that he was born in India on July 4, 1968. The applicant also claims that he resided at [REDACTED] Modesto, CA., from March of 1981 to December of 1988 and that he was employed doing "odd jobs." The AAO notes that the applicant was a child of 12 at the time of his alleged initial entry. The applicant does not provide any details of his arrival, how he traveled to the United States, or whether he was accompanied by any adult. The record contains no school records, or statement from any adult tasked with the responsibility to oversee the care and wellbeing of the applicant nor does the record contain any evidence to explain how he lived during this time. Furthermore,

the applicant does not identify any employer for this period of time or provide any documentary evidence, such as a lease agreement or rent receipts, to corroborate his address.

Furthermore, the evidence of record includes a transcript of proceedings before the Executive Office for Immigration Review (EOIR). These proceedings include an application for asylum and the applicant's sworn testimony under oath before an immigration judge. At his hearing, the applicant confirmed that he was born in India on July 4, 1968. He also stated that he completed his secondary education in 1986, and thereafter assisted his father on their 60 acre farm. The applicant claimed that he joined the All India Sikh Students Federation in April of 1986 where he performed various tasks for them on a monthly basis. The applicant testified that he left India in 1996 after interactions with the police, allegedly on account of his membership in the student federation.

Additionally, the information contained in the application for asylum (I-589) largely confirms the details of the applicant's testimony before the immigration judge, i.e., that he completed his education in India in 1986, that shortly thereafter joined the All India Sikh Students Federation, and that he left India in 1996 subsequent to threats from the police, and that he initially entered the United States without inspection on January 10, 1997. Also, the applicant claimed on the Form I-589 that he was residing in India in 1984.

The evidence of record also contains a statement of Biographic Information (Form G-325). The applicant stated on this form that he resided in India from birth until January of 1997, and was employed as a farmer from 1988 to January of 1997. This information is consistent with the applicant's information on the Petition for Alien Relative (Form I-130), where the applicant's wife indicated that the applicant entered the United States without inspection on January 10, 1997. Thus, the AAO concludes that the applicant's claim of entry prior to January of 1982 and residence in the United States for the requisite period of time is not credible.

In this case, the applicant has not provided any credible evidence of residence in the United States relating to the requisite period, other than his own statement to that effect. As noted above, 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 absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the requisite period seriously detracts 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 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.

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