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**U.S. Citizenship  
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[REDACTED]

FILE: [REDACTED]  
MSC-05-350-11817

Office: SEATTLE

Date: **JUN 19 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: SELF-REPRESENTED

**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", with a horizontal line extending to the right.

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, Seattle. 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, the applicant asserts his claim of eligibility for temporary resident status and submits attestations as evidence.

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. See 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 or her 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 September 15, 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 his first address in the United States as [REDACTED] Fresno, California, from February of 1981 to May of 1985; and [REDACTED] Bakersfield, California, from June of 1985 to May of 1993. Similarly, at part #33, he listed his first employment in the United States as farming in Fresno, California from February of 1981 to May of 1985; and farming in Bakersfield, California, from June of 1985 to May of 1993. It is noted that he did not list the addresses for his places of employment.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant submitted the following attestations:

- A copy of a declaration from [REDACTED] dated June 12, 2005 in which he stated that the applicant lived with him at [REDACTED] Fresno, California, from October of 1981 to June of 1985, and that he helped the declarant cook food and clean up. Here, the statement of the declarant is inconsistent with the statement made by the applicant on his Form I-687 application, at part # 30 where the applicant listed his first address in the United States as [REDACTED] Fresno, California, from February of 1981 to May of 1985. This inconsistency calls into question the declarant's ability to confirm that the applicant resided in the United States throughout the requisite period, as claimed. Because this declaration contains testimony that conflicts with what the applicant showed on his Form I-687 application, doubt is cast on assertions made in the declaration. 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. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The declarant fails to submit evidence to substantiate his claim. Although not required, the declarant has failed to demonstrate that he himself was present in the United States throughout the requisite period.

- A copy of a declaration from [REDACTED] dated March 7, 2005 in which he stated that the applicant lived with him at [REDACTED] Bakersfield, California, from June of 1985 to May of 1993, and that he was paying \$145.00 per month in rent. Here, the declarant fails to submit evidence to substantiate his claim. Although not required, he has failed to demonstrate that he himself was present in the United States throughout the requisite period.
- An affidavit dated May 22, 2006 from [REDACTED] in which he stated that he knew the applicant from 1981 to 1990, while he was staying in Bakersfield, California, that they are close friends and that the applicant helps him from time to time with his work. Here, the affiant fails to show the frequency with which he saw the applicant during the requisite period. He fails to specify how he met the applicant. He also fails to demonstrate that his statements are based upon his firsthand knowledge of the applicant's whereabouts and circumstances in the United States throughout the requisite period. Although not required, he has failed to demonstrate that he himself was present in the United States throughout the requisite period. It is also noted that the applicant does not claim to have lived in Bakersfield until 1985.

In response to the director's Notice of Intent to Deny (NOID), the applicant submitted the following attestations:

- **An affidavit dated August 22, 2006 from [REDACTED]** in which he stated that he has known the applicant since 1981 while the applicant stayed in Fresno and Bakersfield, and that he lived with the affiant in Bakersfield from 1985 to 1990. He also stated that he visits the applicant whenever he is in Fresno, and that the applicant regularly visits the Guru Ravi Dass Temple at Tukwila. The affiant included his Social Security Number and Alien Number. The declarant's statement is inconsistent with the applicant's statement on his Form I-687 application, at part #31 where he was asked to list all affiliations or associations, clubs, organizations, churches, unions, or businesses, and the applicant did not list any. This inconsistency calls into question the declarant's ability to confirm that the applicant resided in the United States throughout the requisite period, as claimed. It is also noted that the affiant fails to list the address where he resided from 1985 to 1990. Because this affidavit contains testimony that conflicts with what the applicant showed on his Form I-687 application, doubt is cast on assertions made in the affidavit.
- An affidavit dated August 15, 2006 from [REDACTED] in which he stated that he has known the applicant from 1981 to 1991, and that they lived together from 1981 to 1985. He also stated that he and the applicant both moved to Bakersfield, California, and that they would meet at the

Sikh Temple. The affiant included his Social Security Number and Alien Number. Here, the affiant has failed to specify his place of residence from 1981 to 1985. Because this affidavit is lacking in detail, it can be accorded little weight in establishing that the applicant resided in the United States during the requisite period.

In denying the application the director noted that the attestations submitted by the applicant were deficient in that the information provided in them was of the barest of statements. The director further noted that none of the attestations were amenable to verification. The director also noted that the service records showed that both the affiants [REDACTED] and [REDACTED] had submitted applications for Temporary Resident Status under Section 245A of the INA that were denied for lack of proof that they resided in the United States prior to January 1, 1982, and throughout the requisite period.

On appeal, the applicant asserts that he is eligible for temporary resident status and submits the following attestations:

- A declaration from [REDACTED] of [REDACTED] in Buttonwillow, California in which it is stated that the applicant had worked at the farm seasonally from 1981 to 1988. Although the applicant indicated that he farmed, he did not list [REDACTED] as an employer. It is also noted that the alleged farm is located 94 miles from where the applicant claimed to have resided from 1981 to 1985. The letter does not conform to regulatory standards for attestations by employers. Specifically, the letter does not specify the address(es) where the applicant resided throughout the claimed employment period, or the exact dates of employment. 8 C.F.R. § 245a.2(d)(3)(i). **Here, the declarant fails to indicate whether the employment information was taken from company records. Neither has the availability of the records for inspection been clarified. 8 C.F.R. § 245a.2(d)(3)(i). The record does not contain copies of personnel records or time cards that pertain to the requisite period to corroborate the assertions made by the affiant. Because this affidavit does not conform to regulatory standards, it can be accorded little weight in establishing that the applicant resided in the United States during the requisite period.**
- A copy of a declaration from [REDACTED] of Gurdwara Sahib of Bakersfield Inc. dated April 1, 2006 in which he stated that the applicant visited the Gurdwara (Church) every month from 1981 to 1991. The declarant further states that the applicant was engaged in social work at the church and that he contributed his personal time during the temple services. The declarant's statement is inconsistent with the applicant's statement on his Form I-687 application, at part #31 where he was asked to list all affiliations or associations, clubs, organizations, churches, unions, or businesses, and the applicant did not list any. This inconsistency calls into question the declarant's ability to confirm that the applicant resided in the United States throughout the requisite period, as claimed. Because this attestation contains testimony that conflicts with what the applicant showed on his Form I-687 application, doubt is cast on assertions made in the attestation.

In the instant case, the applicant has failed to submit evidence that is credible, relevant, or probative sufficient to overcome the director's decision with respect to his continuous unlawful residence in the United States since prior to January 1, 1982, and throughout the requisite period. The applicant has failed to submit any objective evidence to explain or justify the inconsistencies contained in the record. The attestations submitted by the applicant are not credible, conflict with other evidence in the record, are lacking in detail, and have minimal probative value. The affidavits submitted by the applicant on appeal conflict with statements he made on his Form I-687 application, are lacking in detail and are not supported by corroborative evidence.

The absence of sufficiently detailed 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 applicant's reliance upon documents that are inconsistent with statements he made on his Form I-687 application and are lacking in specificity and probative value, 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.