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U.S. Citizenship  
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FILE: [REDACTED]  
MSC-06-026-10879

Office: SEATTLE

Date:

**JUN 20 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 "Robert P. 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, Seattle. The decision is now before the Administrative Appeals Office 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 and been continuously physically present in the United States 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 stated that his affiants are ready to testify personally and requested that the affiants be contacted to obtain information regarding the applicant's residency in the United States.

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 October 26, 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 the following addresses during the requisite period: [REDACTED] Fresno, California from November 1981 to July 1985; and [REDACTED], Bakersfield, California from July 1985 to September 1993. At part #31 where applicants were asked to list all affiliations or associations, clubs, organizations, churches, unions, businesses, et cetera, the applicant stated “None.” At part #33 where applicants were asked to list all employment in the United States since entry, the applicant listed only the following position during the requisite period: Farmer from 1981 to 1993.

In an attempt to establish continuous unlawful residence in this country during the requisite period, the applicant provided multiple attestations. The declaration from [REDACTED] states that the declarant has known the applicant since December 1981. The declarant stated that the affiant used to come to Bakersfield and see the declarant whenever the applicant visited. This declaration fails

to specifically state that the applicant resided in the United States during the requisite period. In addition, the declaration fails to provide detail regarding the region where the applicant resided in the United States during the requisite period, the declarant's frequency of contact with the applicant, and whether the applicant was absent from the United States during the requisite period. Therefore, this declaration is found to lack sufficient detail to confirm that the applicant resided in the United States during the requisite period.

The copy of the undated declaration from [REDACTED] contains a fax transmission mark indicating that the document was sent as a fax on October 30, 2006. The declaration states that the applicant worked for [REDACTED] seasonally from 1981 to 1988. This information is inconsistent with the applicant's Form I-687, where the applicant failed to list [REDACTED] when asked to list all employment since entry into the United States. This inconsistency casts some doubt on the declarant's ability to confirm that the applicant resided in the United States during the requisite period. In addition, this declaration does not conform to regulatory standards for letters from employers as stated in 8 C.F.R. § 245a.2(d)(3)(i). Specifically, the declaration does not include the applicant's address at the time of employment, periods of layoff, whether or not the information was taken from official company records, where the records are located, and whether CIS may have access to the records. Therefore, this declaration will be given very little weight. It is noted that CIS conducted a Social Security Death Index search and found that [REDACTED] died in January 1998. Since the declaration itself is undated and the declarant died after the end of the requisite period, the death of the declarant is found to have no bearing on the credibility of the declaration.

The applicant provided a declaration from [REDACTED] of the Gurdwara Sahib of Bakersfield Inc. This declaration states that the applicant visited the Gurdwara every month from 1981 to 1991. The applicant did social work and contributed his personal time to temple services. This information is inconsistent with the applicant's Form I-687 where he failed to list an affiliation with the Gurdwara Sahib of Bakersfield when asked to list all affiliations or associations. This inconsistency casts some doubt on the declarant's ability to confirm that the applicant resided in the United States during the requisite period. In addition, the declaration does not conform to regulatory standards for attestations by churches, unions, or other organizations as stated in 8 C.F.R. § 245a.2(d)(3)(v). Specifically, the declaration is not signed by an official whose title is shown, does not state the address where the applicant resided during the membership period, does not establish how the author knows the applicant, and does not establish the origin of the information being attested to. Therefore, this declaration will be given very little weight in determining whether the applicant has established that he resided in the United States during the requisite period.

The applicant submitted a declaration from [REDACTED], which states that the applicant lived with the declarant at the [REDACTED] address from November 1981 to July 1985. This declaration fails to provide detail regarding when and how the declarant met the applicant, how they came to be living together, and whether the applicant was absent from the United States during the requisite period. Therefore, this declaration is found to lack sufficient detail to confirm that the applicant resided in the United States during the requisite period.

The applicant provided [REDACTED] which states that the applicant lived with the declarant at the [REDACTED] address from July 1985 to September 1993. This declaration fails to provide detail regarding when and how the declarant met the applicant, how they came to be living together, and whether the applicant was absent from the United States during the requisite period. Therefore, this declaration is found to lack sufficient detail to confirm that the applicant resided in the United States during the requisite period.

The applicant submitted undated declarations from [REDACTED] and [REDACTED] that appear to be identical. The declarants each stated that they have known the applicant since November 1981 and they know the applicant because they met him often in the Sikh Temple "during the period [sic] of that time." These declarations fail to specifically state that the applicant resided in the United States during the requisite period. In addition, the declarations are inconsistent with the Form I-687 where the applicant failed to indicate that he often attended a Sikh temple when asked to list all affiliations or associations with churches and other organizations. This inconsistency casts some doubt on the affiants' ability to confirm that the applicant resided in the United States during the requisite period.

In denying the application the director noted 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 and been continuously physically present in the United States for the duration of the requisite period. The director found 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 stated that his affiants are ready to testify personally and requested that the affiants be contacted to obtain information regarding the applicant's residency in the United States.

In summary, the applicant has submitted attestations that fail to state that the applicant resided in the United States during the requisite period, lack sufficient detail, or fail to conform to regulatory standards. Specifically, the declaration from [REDACTED] fails to state that the applicant resided in the United States during the requisite period and lacks sufficient detail. The declarations from [REDACTED] and [REDACTED] are inconsistent with the applicant's Form I-687 and fail to conform to regulatory standards. The declarations from [REDACTED] and [REDACTED] lack sufficient detail. The declarations from [REDACTED] and [REDACTED] fail to state that the applicant resided in the United States during the requisite period and are inconsistent with his Form I-687.

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. 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 contradictions between the applicant's statements on his Form I-687 and the other documents he submitted, and given 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 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.