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20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE:

[Redacted]

Office: LOS ANGELES

Date: MAR 11 2008

MSC 05 004 10574

IN RE:

Applicant:

[Redacted]

APPLICATION:

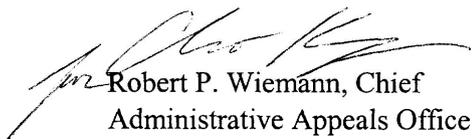
Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

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, Los Angeles. 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. On August 26, 2006, 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 record shows that the applicant timely filed an appeal on Form I-694 on September 27, 2006. Nevertheless, the director on January 29, 2007, issued a decision rejecting the appeal as untimely filed. The director's decision dated January 29, 2007 is hereby withdrawn. Pursuant to 8 C.F.R. § 245.2(p) and 8 C.F.R. § 103.3(a)(3)(iii), jurisdiction over an appeal of a denied Form I-687 application lies solely with the AAO. The director did not have authority to issue a decision on the applicant's appeal.

On appeal, the applicant asserts that he meets all requirements for the benefit sought pursuant to the CSS/Newman Settlement Agreements. He submits a written statement, but no additional evidence, in support of the appeal.

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).

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 14, 2004. The applicant signed this form under penalty of perjury, certifying that the information he provided is true and correct. 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 stated that he resided at [REDACTED] in Artesia, California from April 1981 until August 1987, and at [REDACTED] California from August 1987 until July 1990. At part #33, where applicants were asked to list all employment dating back to their first entry to the United States, the applicant indicated that he worked for Dry Clean Express in Whittier, California from May 1981 until September 1987, and for TAJ Fashions in Whittier, California from September 1987 until 1991. The applicant's residence information indicates that he continuously resided in the United States during the requisite period; however the applicant has failed to corroborate this testimony with credible and probative evidence.

The applicant's administrative record includes a previous Form I-687 application signed by him under penalty of perjury on October 4, 1990, which appears to have been submitted on that date. The information on this Form I-687 application is consistent with what he indicated on the instant Form I-687 filed in 2004.

The applicant's record also includes a previous Form I-687 application signed by him under penalty of perjury on June 25, 1990. On this application, the applicant provided completely different information regarding his residences and employers in the United States during the requisite period. The applicant indicated that he resided at [REDACTED] California from February 1981 until November 1984; at [REDACTED] from November 1984 until July 1987; and at [REDACTED], California beginning in August 1987. The applicant stated that he was employed by "Asian Grocery" in Tustin California from May 1981 until September 1983, by India Video & Records in Artesia, California from October 1983 until June 30, 1987; and by [REDACTED] in Los Angeles, beginning in August 1987.

The fact that the applicant previously signed two Forms I-687 containing such blatantly inconsistent information within the space of four months raises serious questions regarding his credibility in general and the probative value of evidence submitted in support of the instant application.

The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of documentation that may be provided to establish proof of continuous residence in the United States during the requisite period. This list includes: past employment records; utility bills; school records; hospital or medical records; attestations by churches, unions or other organizations; money order receipts; passport entries; birth certificates of children; bank books; letters or correspondence involving the applicant; social security card; selective service card; automobile receipts and registration; deeds, mortgages or contracts; tax receipts; and insurance policies, receipts, or letters. The applicant submitted the following evidence in support of the instant application:

- A copy of a letter dated August 14, 1987 from [REDACTED], who identifies himself as the owner of Dry Clean Express located in Whittier, California. [REDACTED] stated that the applicant was employed by his company as a "packing boy" from May 10, 1981 until June 30, 1987, with responsibility for packing and pressing garments.
- A copy of a letter dated July 28, 1990 from [REDACTED] of TAJ Fashions in Los Angeles, California. [REDACTED] stated that the applicant was employed as a cashier in his shop from September 1, 1987 until July 26, 1990.
 - A copy of a month-to-month rental agreement dated April 25, 1981, between the applicant (along three other individuals) and [REDACTED] for an apartment located at [REDACTED] in Artesia, California. This address is consistent with information the applicant provided on his current Form I-687 regarding his first residence in the United States. However, the applicant previously indicated that he lived in Whittier, California in 1981 and provided in support of the

instant application copies of envelopes ostensibly addressed to him at the Whittier, California address in 1981.

- Copies of rent receipts dated November 1984, December 1984, March 1985, June 1985, January 1986, April 1986, January 1987, May 1987 and June 1987, issued to the applicant and [REDACTED]. The receipts are signed by [REDACTED] and show that the applicant and [REDACTED] paid rent for an apartment located at [REDACTED], California. As noted above, the applicant stated on the instant application that he lived at [REDACTED] in Artesia, California from April 1981 until August 1987, thus calling into question the validity of these receipts and the applicant's claims.
- Photocopies of two airmail envelopes bearing Pakistani postage and cancellation stamps, addressed to the applicant at [REDACTED], California. The applicant indicates that they are dated 1981, although the dates are nearly illegible. However, the applicant did not claim on the instant application that he ever lived on Regatta Avenue.
- A copy of a California identification card issued to the applicant on August 31, 1990.
- A copy of a California driver license issued to the applicant on June 11, 1986.
- A letter dated August 4, 2001 from the [REDACTED] Temple stating that the applicant is a follower of the Sikh religion and member of the temple.

The applicant's record also contains the following evidence submitted in support of his June 1990 legalization application:

- A copy of an employment verification letter dated July 9, 1990 from [REDACTED], who identifies himself as the owner of [REDACTED] located in Los Angeles, California. [REDACTED] stated that the applicant was hired by his company as a salesperson on August 25, 1987 and was still working for the business as of July 1990.
- A copy of an employment verification letter dated June 30, 1987 from [REDACTED] who identified himself as the manager of India Video & Records in Artesia, California. [REDACTED] indicated that the applicant was employed by the business as a cashier from October 24, 1983 until June 30, 1987.
- A copy of an employment verification letter dated July 6, 1990 from [REDACTED], who identified himself as supervisor at "Asian Grocery" located in Tustin, California. He certified that the applicant worked in the store as a cashier from May 1981 until September 1983.
- A copy of a month-to-month rental agreement dated November 17, 1984 between the applicant [REDACTED] and [REDACTED], for Apartment #8 located at [REDACTED] Whittier, California.

- A class membership questionnaire dated July 11, 1990 indicating that the applicant entered the United States for the first time on February 11, 1981.
- A class membership questionnaire dated October 4, 1990, indicating that the applicant entered the United States for the first time in April 1981.

As noted above, the applicant does not indicate on his current application that he ever worked for Asian [REDACTED] or India Video & Records, or that he ever resided at Regatta Avenue in Whittier, California, notwithstanding his own previous statements and efforts to document this employment and residence information. The applicant has now submitted employment verification letters from different employers for the same period of time. Furthermore, it is noted that none of the employment letters in the record meet the regulatory guidelines. The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states, in pertinent part: that letters from employers should be on the employer letterhead stationary, if the employer has such stationary, and must include the following: an applicant's address at the time of employment; the exact period of employment; periods of layoff; duties with the company; whether or not the information was taken from the official company records; and where records are located and whether the Citizenship and Immigration Services (CIS) may have access to the records. The regulation further provides that if such records are unavailable, an affidavit form-letter stating that the alien's employment records are unavailable and noting why such records are unavailable may be accepted in lieu of statements regarding whether the information was taken from the official company records and an explanation of where the records are located and whether CIS may have access to those records. 8 C.F.R. § 245a.2(d)(3)(i). This affidavit form-letter shall be signed, attested to by the employer under penalty of perjury, and shall state the employer's willingness to come forward and give testimony if requested. *Id.* None of the employment letters identify the address at which the applicant resided during the claimed period of employment, and do not indicate whether the information was taken from official company records. Furthermore, due to the significant unresolved inconsistencies in the record regarding the applicant's employment history during the relevant period, none of the employment letters can be given any evidentiary weight.

An applicant may also submit "any other relevant document." 8 C.F.R. § 245a.2(d)(3)(vi)(L). The applicant submitted a number of attestations from individuals, including the following:

- A notarized declaration dated August 30, 2004 from [REDACTED] who stated that he met the applicant at a New Years Eve party in 1985, and that he has been in touch with him since that time. He stated that the applicant went to India in July 1987 to see his family.
A notarized declaration dated August 8, 2001 from [REDACTED] who stated that he met the applicant in spring of 1981 and has personal knowledge of the applicant's continuous residence in the United States since that time, as he sees him on a frequent basis.
- A notarized declaration dated August 8, 2001 from [REDACTED] who stated that he met the applicant at a New Years Eve Party in Long Beach, California in 1984 and has remained in touch with him since that time.
- A copy of an affidavit dated September 18, 1990 from [REDACTED] who stated that he had knowledge that the applicant was residing in the United States since April 1981, that the applicant

is a close friend of his whom he knew from India, and that he used to see the applicant almost every week.

- A notarized declaration dated August 7, 2001 from [REDACTED] who stated that he has known the applicant to be living in the United States since the summer of 1985.
- A form letter affidavit of witness dated September 18, 1990 from [REDACTED] who stated that he met the applicant in 1981, when the applicant came to his friend's house. He stated that he is a good friend of the applicant and that he has personal knowledge that the applicant resided at [REDACTED] in Artesia from April 1981 until July 1987, and at [REDACTED] from August 1987 until July 1990.
- A form letter affidavit of witness dated September 18, 1990 from [REDACTED] who stated that he was a friend of the applicant from India and that he visits the applicant almost every month. He stated that he has personal knowledge of the applicant residences since April 1981 and provided addresses consistent with what the applicant stated on his 2004 Form I-687.

The applicant's record also contains the following affidavits:

- An affidavit dated July 11, 1990 from [REDACTED] California, who stated that he has known the applicant since 1971 and that he has personal knowledge of the applicant's continuous residence in the United States since February 1981. He states that the applicant was residing with him in an apartment in July 1987.
- An affidavit dated July 11, 1990 from [REDACTED] who stated that he resided with the applicant at [REDACTED] in Long Beach, California beginning on August 16, 1987.
- An affidavit dated July 11, 1990 from [REDACTED], who stated that the applicant resided with him as his roommate at [REDACTED] California from February 1981 until November 21, 1984. As noted above, the applicant stated on his 2004 Form I-687 that he lived at a different address from 1981 to 1984, thus this affidavit is inconsistent with the applicant's own testimony and is not credible.

The applicant was interviewed by a CIS officer on June 6, 2006. The director denied the application on August 26, 2006. In denying the application, the director noted that there were many inconsistencies between the applicant's testimony, the information provided in the affidavits, and the other evidence provided by the applicant, such as the lease agreements and rental receipts. The director determined that the affidavits and other evidence were therefore lacking in credibility. The director concluded that the applicant failed to establish his eligibility for temporary residence under Section 245A of the Act.

On appeal, the applicant states that he meets all eligibility requirements for temporary resident status. He does not address the specific inconsistencies noted by the director in the Notice of Decision.

Upon review, the applicant has not established by a preponderance of the evidence that he resided in the United States for the duration of the requisite period.

As is stated above, 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). The applicant has been given the opportunity to satisfy his burden of proof with a broad range of evidence pursuant to 8 C.F.R. § 245a.2(d)(3). The only contemporaneous evidence of the applicant's residence are the rent receipts and lease agreements, which are inconsistent with the applicant's statements on his Form I-687 and thus not credible. The applicant's record contains unresolved inconsistencies regarding the applicant's addresses of residence and employers during the requisite period. Further, the various affidavits and letters from persons claiming to have known the applicant during the requisite period are uniformly lacking in detail and probative value, and, at times, inconsistent with the applicant's own testimony. The applicant has offered no explanation for the contradictions and inconsistencies in the record. These inconsistencies, taken together with the applicant's own inconsistent testimony on his previous and current Form I-687, greatly diminish the credibility of the evidence submitted. As such, the applicant cannot meet either the necessary continuous residency or continuous physical presence requirements for legalization pursuant to section 245A of the Act.

The absence of sufficiently detailed, consistent 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 inconsistent testimony 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--*, *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.