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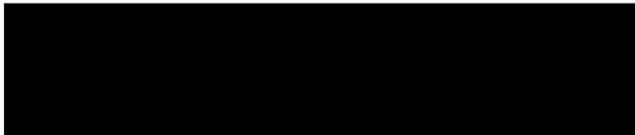
Office: NEW YORK

Date: **MAY 01 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:



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.

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, New York, 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 she 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 her 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 disputes the director's decision, asserting that minor inconsistencies were due to typographical errors that should not have served as grounds for denial.

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 she resided in the United States during the requisite time period. Here, the applicant has not met this burden.

The record shows that the applicant did not provide supporting documentation at the time she filed her Form I-687. Accordingly, Citizenship and Immigration Services issued a notice of intent to deny (NOID) on January 3, 2006 allowing the applicant the opportunity to supplement the record with corroborating evidence. In response, the applicant submitted the following documents:

1. An affidavit dated December 2, 2005 from [REDACTED] who attested to his knowledge of the applicant from 1981 to 1988 "through both our work and social ties." However, the affiant neither specified the month he purportedly met the applicant nor the work or various social ties that led to his acquaintance with the applicant. This information is particularly relevant in light of the fact that the applicant did not identify any employers in No. 33 of her Form I-687 application. Additionally, while the affiant vouched for the applicant's good moral character, he failed to provide any information about the events and circumstances of the applicant's life in the United States during her purported residence within the relevant time period. Due to these various deficiencies and inconsistencies, this affidavit will be afforded minimal evidentiary weight.
2. An employment letter dated February 23, 2006 from [REDACTED] of Honest Builders, Inc. claiming that the applicant was employed by this company from August to December 1985. However, as stated above, the applicant did not identify any employers on her Form I-687, thereby suggesting that she had not been employed in the United States. As such, this letter from [REDACTED] is inconsistent with information provided by the applicant and, therefore will be afforded no weight as evidence in support of the applicant's claim.

3. An affidavit dated February 24, 2006 from [REDACTED] who claimed that she met the applicant in September or October 1981. Although the affiant attested to the applicant's good moral character and claimed that she maintained contact with the applicant and her husband, she provided no information to lend credibility to her alleged 24-year relationship with the applicant. As such, this affidavit will be afforded minimal weight as evidence of the applicant's residence in the United States during the statutory period.
4. A letter dated February 28, 2006 from The Sikh Cultural Society, Inc. stating that the applicant has been coming to this congregation for a long time. No specific date was given to establish when the applicant purportedly started attending the congregation nor is there any indication that the applicant attended the Sikh temple during the statutory time period. As such, this letter will be afforded minimal evidentiary weight.
5. An affidavit dated February 25, 2006 from [REDACTED] who stated that he was the superintendent at [REDACTED], Rego Park, New York from March 1981 until July 1988 when the applicant resided there at apartment 1F with her husband. The affiant claimed that he saw the applicant and her husband regularly to collect their rent. However, the affiant failed to clarify the basis for this specific information. In light of the fact that the affiant attested to events that allegedly took place nearly 18 years prior to the date of the affidavit, it is reasonable to expect the affiant to clarify whether records exist of the applicant's apartment rental. Moreover, the affiant failed to provide a phone number where he can be contacted for further information.
6. An undated affidavit from [REDACTED] who claimed that he met the applicant and her husband in 1982 in New York. The affiant claimed that the applicant and her husband stayed with him for a few days. This statement, however, is confusing and does not appear to be credible in light of the information provided by the applicant. Specifically, it is unclear why the applicant and her husband, who claim to have lived in New York since prior to 1982, would have stayed with the affiant in New York. More importantly, the affiant failed to provide any information about the events and circumstances of the applicant's life in the United States during her purported residence within the relevant time period.
7. An affidavit dated February 27, 2006 from [REDACTED] stating that the applicant resided at [REDACTED], Rego Park, New York in 1982 and claiming that he has been in contact with the applicant since then. However, the affiant did not explain how he came to know this information, nor did he specify the nature of his claimed relationship with the applicant.

Upon reviewing the documentation submitted and the testimony from the applicant's interview on June 9, 2006, the district director determined that the applicant failed to adequately support her claim and issued a second NOID on June 23, 2006. Among her findings, the district director noted that the applicant did not submit supporting evidence of her unlawful entry into the United States and further stated that the

applicant provided a driver's license showing a Michigan address, which she did not list on her application. The AAO notes that it is unreasonable to expect an alien to provide documentation of an act she claimed was unlawful. As such, no adverse findings should stem from an alien's claim of having first entered the United States without inspection prior to the commencement of the statutory period. Additionally, while the director made note of the applicant's Michigan driver's license, neither the original document nor its photocopy was incorporated into the record. As such, the AAO will not consider either of these findings in rendering this decision.

Nevertheless, the director properly found that the applicant submitted deficient supporting documents to corroborate her claim.

In response to the director's notice of intent to deny, the applicant provided a copy of her New York identification card issued by the Department of Motor Vehicles showing the applicant's residential address in Richmond Hill, New York. The applicant also provided a copy of her Indian passport as well as the various U.S. and Canadian visas issued to her. The applicant did not, however, provide additional evidence in support of her claim.

On September 18, 2006, the district director issued a decision denying the application for the reasons set forth in the NOID.

On appeal, which was filed by a new representative, counsel asserts that typographical errors were responsible for various inconsistencies in the record. Counsel also asserts that the director's decision is inconsistent with the documentation on record and further claims that the district director chose to adhere to standards that are not "normally followed and accepted in adjudicating such matters."

While the AAO agrees that a few of the district director's findings were erroneous, the overall adverse conclusion will be affirmed.¹ First, counsel failed to specify any inconsistencies or to explain which typographical errors he thought contributed to the adverse decision. Second, although the AAO notes that the notice of intent was deficient, counsel fails to specify how the ultimate decision to deny the application was incorrect, what he deemed to be the normal standards generally employed in adjudicating Form I-687 applications, and how the director purportedly strayed from such standards. In other words, counsel provided general statements without specifying how the director's decision was incorrect.

Moreover, 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. In the present matter, the applicant has submitted deficient affidavits from affiants how failed to provide specific

¹ Although the director's adverse findings were, in part, based on the determination that the applicant failed to establish class membership, the fact that the application was adjudicated suggests that the applicant was treated as a class member, despite any adverse findings. As such, the AAO's decision will focus strictly on the applicant's eligibility for temporary resident status.

information about the events and circumstances of the applicant's life in the United States during the relevant time period. As previously discussed, several of the affidavits, particularly those addressing the applicant's employment in the United States, are inconsistent with the applicant's own information, which suggests that the applicant has never been employed in the United States. 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 will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). These inconsistencies have not been reconciled.

Accordingly, given the above contradictions and the applicant's reliance upon documents with minimal probative value, it is concluded that the applicant has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through the date she 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.

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