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U.S. Citizenship
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FILE: [REDACTED]
MSC-05-223-10375

Office: LOS ANGELES

Date: **MAY 02 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. 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.

for Michael T. Kelly
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 District. 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 May 11, 2005 (together, the I-687 Application). 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 noting that the information and documentation that the applicant submitted are insufficient to overcome the grounds for denial. The director denied the application as 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 submitted a Form I-694 Notice of Appeal of Decision Under Section 210 or 245A and a brief. The applicant also submitted from Sikh Temple Riverside on appeal. In his brief, the applicant states that he has “lived in the United States since 1981 and he [has] already submitted affidavits from the people who have known [him] since that time.” He also states that he has “never kept records of [his] bills [or] receipts.” As of this date, the AAO has not received any additional evidence from the applicant. Therefore, the record is complete.

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 periods, 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. *See* 8 C.F.R. § 245a.2(d)(6). The weight to be given any affidavit depends on the totality of the circumstances, and a number of factors must be considered. More weight will be given to an affidavit in which the affiant indicates personal knowledge of the applicant's whereabouts during the time period in question rather than a fill-in-the-blank affidavit that provides generic information. Although not required, the credibility of an affidavit may be assessed by taking into account such factors as whether the affiant provided some proof that he or she was present in the United States during the requisite period. The regulations provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment or attestations by churches or other organizations. 8 C.F.R. §§ 245a.2(d)(3)(i) and (v).

Even if the director has some doubt as to the truth, if the applicant 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 entered before 1982 and resided in the United States for the requisite period.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on May 11, 2005. At part #30 of the Form I-687 application where applicants are asked to list all residences in the United States since first entry, the applicant listed his first address in the United States as [REDACTED], Delano, California,

from December 1981 to April 1984. At part #33, he listed his first employment in the United States as a farm worker for Gill Farm in Delano, California, from December 1981 to April 1988. At part #32, the applicant listed one absence from the United States during the requisite period. The applicant visited friends in Canada from July 12, 1987 to August 10, 1987. At part #31, the applicant listed an affiliation with the Sikh Temple in Riverside, California from 1995 to the present.

The applicant has provided affidavits; notarized statements; letters from individuals; a copy of the applicant's passport issued in New York on March 1, 1992; the applicant's Social Security Administration earnings statement listing 1990 as the first year that the applicant paid social security taxes; copies of the applicant's California driver's licenses issued on July 18, 1990 and on July 28, 2005; copies of the applicant's employment authorization cards issued on April 25, 2004 and on July 29, 2005; affidavits stating that there is no record of the applicant's birth on May 20, 1968; and postmarked envelopes addressed to the applicant. The applicant's California driver's licenses and employment authorization cards are evidence of the applicant's identity, but do not demonstrate that he entered before 1982 and resided in the United States for the requisite period. Some of the evidence submitted indicates that the applicant resided in the United States after the requisite period and is not probative of residence before that date. The following evidence relates to the requisite period:

- An affidavit from [REDACTED] dated November 7, 2005. The declarant states that he has lived in the United States and known the applicant since 1983. The declarant also states that he has kept in contact with the applicant "by telephone and personal meeting." Although the declarant states that he has known the applicant for 22 years, the statement does not supply enough details to lend credibility to a 22-year relationship with the applicant. The declarant does not indicate how he dates his initial acquaintance with the applicant or how frequently he had contact with the applicant. Given these deficiencies, this statement has minimal probative value in supporting the applicant's claims that he entered the United States in 1981 and resided in the United States for the entire requisite period.
- An affidavit from [REDACTED] dated November 7, 2005. The declarant states that he lives in Riverside, California and has lived in the United States since 1977. He also states that he met the applicant "at Sikh Temple in the city of Alhambra in December 1981 and [has] known him since then." The declarant adds that the applicant was "living in Delano, California at that time" and that he and the applicant met at "social gatherings often at each other's residences." Although the declarant states that he has known the applicant since 1981, the statement does not supply enough details to lend credibility to a 24-year relationship with the applicant. The declarant does not indicate under what circumstances he met the applicant in 1981, how he dates his initial acquaintance with the applicant, or how frequently he had contact with the applicant. Given these deficiencies, this statement has minimal probative value in supporting the applicant's claims that he

entered the United States in 1981 and resided in the United States for the entire requisite period.

- An affidavit from [REDACTED] dated September 24, 2001. The declarant states that he lives in Fontana, California and has known the applicant since 1981. He also states that “this knowledge came by attending some [sic] church every week and church activities.” The declarant adds that he and the applicant “belong to the Sikh faith and we attend church regularly.” Although the declarant states that he has known the applicant since 1981, the statement does not supply enough details to lend credibility to a 20-year relationship with the applicant. The declarant does not indicate under what circumstances he met the applicant in 1981, how he dates his initial acquaintance with the applicant, or how frequently he had contact with the applicant. Given these deficiencies, this statement has minimal probative value in supporting the applicant's claims that he entered the United States in 1981 and resided in the United States for the entire requisite period.
- An affidavit from [REDACTED] dated August 7, 1990. The declarant states that he lives in Whittier, California. He also states that he knows “for a fact that [the applicant] left the United States for Canada [on] July 12, 1987 [and] returned August 10, 1987.” The declarant does not provide any other information regarding the applicant’s trip to Canada or how the declarant knows of the trip. The declarant provides no information regarding the applicant’s claims that he entered the United States in 1981 and resided in the United States for the entire requisite period. Given these deficiencies, this statement has no probative value in supporting the applicant's claims that he entered the United States in 1981 and resided in the United States for the entire requisite period.
- Two nearly identical letters from [REDACTED] dated September 17, 2001 and September 20, 2001. Neither letter is notarized. In both letters the declarant states that he lives in Claremont, California and has lived in the United States since 1972. In both letters the declarant states that he has known the applicant since “December 1981 to [the] present” and that they “have been in contact by telephone or parties during these years.” Although both of the declarant’s letters are essentially identical, they appear to be for two different applicants. The letter dated September 17, 2001 lists the applicant’s name and date of birth, May 20, 1968. However, the letter dated September 20, 2001 is for [REDACTED] whose date of birth is “February 28, 1961.” On the Form I-687, part #4, the applicant stated that he had not used any other names and the name “[REDACTED]” is not the applicant’s name or a known alias. Although the declarant states that he has known the applicant since 1981, the statement does not supply enough details to lend credibility to a 20-year relationship with the applicant. The declarant did not provide proof of his identity, he does not indicate under what circumstances he met the applicant in 1981, how he dates his initial acquaintance with the applicant, or how frequently he had contact with the applicant. Given these deficiencies, this statement has minimal probative value in

supporting the applicant's claims that he entered the United States in 1981 and resided in the United States for the entire requisite period.

- A letter on letterhead of the Sikh Temple Riverside in Riverside, California, dated September 15, 2006 and signed by [REDACTED] President. The applicant's name and current address are included, and the letter states that the declarant has "personally known [the applicant] since 1983." The letter also states that the declarant has "seen [the applicant] performing his prayers in the Sikh Temple since the year 1983." The AAO notes that although the applicant lists an affiliation with the Sikh Temple Riverside, according to the Form I-687 the applicant's affiliation with the Sikh Temple Riverside began in 1995. The declarant's statements are not consistent with the applicant's description of his affiliations or associations on the Form I-687. Moreover the letter fails to conform to regulatory guidelines in that it is not notarized, it does not establish how the author knows the applicant, or state the origin of the information provided. See 8 C.F.R. § 245a.2(d)(3)(v). The letter has no probative value for these reasons.
- Two postmarked envelopes addressed to the applicant at an address included in the Form I-687. The envelopes are dated 1982 and 1983. They have minimal weight as evidence of residence. Along with the envelopes, the applicant included letters with translations. According to the translations, the letters include news from the applicant's family. The AAO notes that the translation for [REDACTED]'s letter is dated September 15, 1986 and states "you are in America since [sic] five years." However, the original letter from [REDACTED] is dated "15/9/82" or September 15, 1982. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Furthermore, there is no indication that the letters included were mailed in the postmarked envelopes. Finally, the translations submitted were not certified and therefore, do not meet the regulation at 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding. The AAO withdraws the director's statement regarding the postmarked envelopes.

For the reasons noted above, the documents submitted in support of the applicant's claim have been found to lack credibility or to have minimal probative value as evidence of the applicant's residence and presence in the United States for the requisite period. Although the applicant has submitted letters and affidavits, they all lack sufficient detail to be found credible or probative. The letter from the Sikh Temple Riverside fails to meet regulatory standards.

The director issued a notice of intent to deny (NOID) on November 22, 2005. The director denied the application for temporary residence on August 26, 2006. In denying the application,

the director found that the applicant failed to establish that he entered the United States prior to January 1, 1982 or that he met the necessary residency or continuous physical presence requirements. Thus, the director determined that the applicant failed to meet his burden of proof by a preponderance of the evidence.

On appeal, the applicant submitted a brief and a letter from the Sikh Temple Riverside. The letter from the Sikh Temple Riverside fails to meet regulatory standards. As noted above, to meet his burden of proof, the applicant must provide evidence of eligibility apart from his own testimony. In this case, his assertions regarding his entry are not supported by any credible evidence in the record.

In this case, the absence of sufficient 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.