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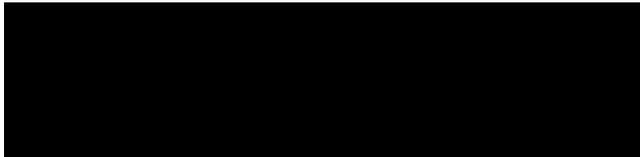
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20 Mass. Ave., N.W., Rm. 3000  
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U.S. Citizenship  
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Services

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FILE:

MSC-05-251-36835

Office: NEW YORK

Date: **MAY 15 2008**

IN RE:

Applicant:



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. 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, counsel asserts that the applicant has submitted sufficient evidence to establish his eligibility for temporary resident status.

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 June 9, 2005.

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

- An affidavit dated May 16, 2005 from [REDACTED] in which he stated that he has known the applicant since November of 1982, and that the applicant used to reside at [REDACTED], Jamaica, New York. He also stated that the applicant was a street vendor, that they used to travel together on the subway in New York City, and that he lost contact with the applicant during the middle of 1985 and resumed relations in 2001. Here, the affiant admits to losing contact with the applicant from 1985 to 2001. It is also noted that the affiant's first encounter with the applicant was allegedly in November of 1982, thus making it impossible for him to substantiate the applicant's claim of continuous unlawful residence in the United States since before January 1, 1982. Because the affidavit is lacking in probative value, it can be afforded only minimum weight in establishing that the applicant resided in the United States throughout the requisite period.
- An affidavit dated May 18, 2005 from [REDACTED] in which he stated that he has known the applicant since his arrival in the United States in 1984, and that he would regularly see the applicant doing volunteer work at the Richmond Hill New York Sikh Temple, where he would attend weekly prayer services. He also stated that the applicant told him that he was a street

vendor, and that he remembers that the applicant used to live at [REDACTED], Jamaica, New York. This affidavit is inconsistent with the information provided by the applicant on his Form I-687 application, where he failed to list his association or affiliation with any church or religious establishments when asked to do so at part #31. This inconsistency calls into question the affiant's ability to confirm that the applicant resided in the United States during the requisite period. Because this affidavit contains statements that conflict with what the applicant showed on his Form I-687, doubt is cast on the assertions made. 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. 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). It is further noted that the affiant stated that he initially met the applicant in 1984, and therefore, he is unable to substantiate the applicant's contention that he was present in the United States prior to January 1, 1982. Because this affidavit conflicts with other evidence in the record, and is lacking in detail and in probative value, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

- An affidavit dated May 19, 2005 from [REDACTED] in which he stated that he would attend weekly prayer services at the Richmond Hill New York Sikh Temple where he met the applicant in 1981, and that the applicant performed volunteer work at the Temple. He also stated that the applicant used to work as a street vendor, that he lost contact with the applicant in 1987, and that he resumed relations with the applicant in 2000. Here, the affiant's statement is inconsistent with the applicant's statement made on his Form I-687 application at part #31 where he fails to list an affiliation or association with any church or religious establishment. It is further noted that the affiant has failed to submit evidence to demonstrate that he himself was present in the United States throughout the requisite period. Although the affiant attested to the applicant's residence in this country since 1981, he has failed to provide any relevant and verifiable testimony, such as the applicant's place of residence in the United States, to corroborate the applicant's claim of residence in the country since prior to January 1, 1982. Because the statement conflicts with other evidence in the record, and because it is significantly lacking in detail, it can be accorded only minimum weight in establishing that the applicant resided in the United States throughout the requisite period.
- An affidavit from [REDACTED] in which she stated that she met the applicant in 1981 and that she remembers the applicant selling flowers on a street corner. She also stated that the applicant had no place to live when she first met him so she let him stay with her for two weeks. Here, the affiant has failed to specify the frequency with which she saw the applicant during the requisite period and how she dates her initial acquaintance with the applicant. Although not required, the affiant has not provided evidence to demonstrate that she herself was present in the United States throughout the requisite period. She has failed to provide any relevant and verifiable testimony, such as the applicant's specific place of residence in this

country during the requisite period, to corroborate the applicant's claim of residence in the United States since prior to January 1, 1982. The attestation lacks detail that would lend credibility to the claimed relationship with the applicant, and therefore, it can be accorded only minimal weight in establishing that the applicant resided in the United States throughout the requisite period.

- An affidavit dated May 15, 2005 from [REDACTED] in which he stated that he has known the applicant since 1987 when the applicant came to live with him at [REDACTED] Flushing, New York. Although the affiant claims that the applicant resided with him since 1987, this attestation is insufficient to substantiate the applicant's claim of residence in the United States since before January 1, 1982. Because the affidavit is lacking in probative value, it can be afforded only minimum weight in establishing that the applicant resided in the United States throughout the requisite period.

The director issued a Notice of Intent to Deny (NOID) dated June 23, 2006, in which he indicated that the affidavits submitted were not amenable to verification.

In response to the director's NOID, the applicant resubmitted affidavits from [REDACTED] and [REDACTED] and stated that they were sufficient to demonstrate the applicant's presence in the United States throughout the requisite period.

In denying the application the director noted that the affidavits submitted were not considered credible or amenable to verification after numerous attempts to contact the affiants had been made.

On appeal, counsel asserts that the director's decision was in error and that the affiants are amenable to verification and that the Temple has been registered with the State of New York since 1965. The applicant submitted a copy of a New York registration notice indicating that the Sikh Cultural Society, Inc. has been doing business in New York since August 2, 1965. Although this notice indicates that the Temple was registered before 1981, the applicant fails to mention any association or affiliation with such organization. The applicant also submits the following attestations:

- An affidavit from [REDACTED] dated August 26, 2006 in which she states that she has submitted an affidavit on behalf of the applicant in the past and understands that the director denied the applicant's application noting that she was unreachable by phone. The affiant also states that she is home most of the time, barring her regular visits to her doctor. Here, the affiant has failed to specify the frequency with which she saw the applicant during the requisite period. The affiant has not provided evidence to demonstrate that she herself was present in the United States throughout the requisite period. She has failed to provide any relevant and verifiable testimony, such as the applicant's specific place of residence in this country during the requisite period, to corroborate his claim of residence in the United States since prior to January 1, 1982. Based upon a review of the affiant's statements, it does not appear that she was in frequent contact with the applicant or that she possessed firsthand

knowledge of his whereabouts or circumstances surrounding his places of residence throughout the requisite period.

- Affidavits from [REDACTED] and [REDACTED] dated August of 2006 in which they affirm their statements made in their above noted affidavits. They also provide their addresses and phone numbers. Here, [REDACTED] attests to knowing the applicant since November of 1982 and losing contact with him after the middle of 1985. This attestation is insufficient to establish the applicant's residence in the country since before January 1, 1982. [REDACTED] and [REDACTED] both attest to knowing the applicant through his affiliation with the Richmond Hill New York Sikh Temple however, the applicant failed to indicate his affiliation or association with any religious or social organization during his interview with the immigration officer or on his Form I-687 application. This inconsistency calls into question the affiant's ability to confirm that the applicant resided in the United States throughout the requisite period. Because the affidavits contain statements that conflict with what the applicant stated under penalty of perjury during his interview and with what he showed on his Form I-687, doubt is cast on the assertions made.
- A letter from the general secretary of the Sikh Cultural Society, Inc. in which he states that the applicant is a member of the congregation who attends services on a regular basis. He also states that the applicant participates in community related activities and assists with kitchen cleaning. This statement is inconsistent with the applicant's information on his Form I-687 application, at part #31 where he was asked to list all affiliations and associations with churches, organizations, and clubs, he did not list any. Because the declaration contains testimony that conflicts with what the applicant showed on his Form I-687 application, doubt is cast on the assertion made by the declarant. It is further noted that the letter does not conform to regulatory standards for attestations by churches. Specifically, the letter does not show inclusive dates of membership, it does not state the address where the applicant resided during the alleged membership period, nor does it establish the origin of the information being attested to. 8 C.F.R. § 245a.2(d)(3)(v). Because this affidavit conflicts with other evidence in the record, is lacking in detail and probative value, and does not conform to regulatory standards, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

In the instant case, the applicant has failed to provide sufficient, probative evidence to establish his continuous unlawful residence in the United States since prior to January 1, 1982. He has failed to overcome the issues raised by the director in the NOID and final decision. It is noted that the applicant was 12 years old when he claimed to have entered the United States. It is highly unlikely that he was employed as claimed or that he was able to sustain himself without the assistance of a parent or guardian. It is noted that although the affiants discuss their relations with the applicant during the 1980's, not one of them mentioned that he was a child or indicated how he survived as a child during that period. The affiants fail to provide details regarding their claimed acquaintances with the applicant, and they fail to provide evidence that demonstrates that they themselves were present in the United States throughout the requisite period.

Although the applicant claims to have resided in the United States since he was 12 years old, he provided neither school records nor medical records to substantiate such claim. He also failed to provide any evidence from or about any responsible adult or guardian to indicate the circumstances of how he survived during his childhood and throughout the requisite period. The evidence submitted by the applicant is not credible and conflicts with statements he made on his Form I-687 application. Here, the applicant has failed to submit evidence sufficient to substantiate his assertions made on appeal.

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 contradictory statements 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 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.