

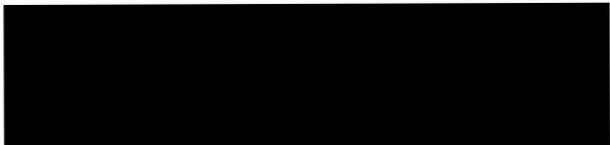
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U.S. Citizenship
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Services

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FILE: [REDACTED] MSC-06-031-13558

Office: NEW YORK

Date: **SEP 17 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.

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, 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 director's actions in denying the application was an abuse of discretion, that the director used the wrong adjudication standard in reviewing the evidence, and that the discrediting of the two affiants by the director was inaccurate. Counsel further asserts the applicant's claim of 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 October 31, 2005.

The applicant submitted the following attestations with his Form I-687 dated 1992:

- A letter dated April 25, 2004 from [REDACTED] a Priest at The Sikh Cultural Society, Inc. in which he stated that the applicant has been a member of the congregation “for a long time.” He further stated that the applicant attends the Gurudwara (Sikh Temple) regularly, that he actively participates in community activities, and that he helps out in the (Langar) community kitchen. This letter is inconsistent with the applicant’s Form I-687 application, at part #31, where he responded “none” when asked to list all of his affiliations or associations in the United States with churches, organizations or clubs. This inconsistency calls into question the declarant'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). In addition, 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 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 does not conform to regulatory standards, because it conflicts with other evidence in the record, and because it is lacking in detail and probative value, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

- A declaration from [REDACTED] president of Falk Drugs, in which he stated that his company employed the applicant from October of 1981 to June of 1984 as a helper in the store room. Here, the declaration does not conform to regulatory standards for attestations by employers. Specifically, the declarant does not specify the applicant's address(es) at the time of his employment, periods of layoffs, or whether the information was taken from official company records. 8 C.F.R. § 245a.2(d)(3)(i). In addition, the record does not contain pay stubs, payment invoices, schedules, cancelled checks, personnel records, payroll records, W-2 Forms, certification of filing of Federal income tax returns, payroll records or time cards to corroborate the assertions made by the declarant. Because this declaration 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.
- A declaration from [REDACTED] dated August 13, 1988 in which he stated that he employed the applicant as a sales person from November of 1984 to August of 1988. Here, the declaration does not conform to regulatory standards for attestations by employers. Specifically, the declarant does not specify the applicant's address(es) at the time of his employment, periods of layoffs, or whether the information was taken from official company records. 8 C.F.R. § 245a.2(d)(3)(i). In addition, the record does not contain pay stubs, payment invoices, schedules, cancelled checks, personnel records, W-2 Forms, certification of filing of Federal income tax returns, payroll records or time cards to corroborate the assertions made by the declarant. Because this declaration conflicts with statements made by the applicant on his Form I-687, and because it 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.
- An affidavit from [REDACTED] in which he stated that he has known the applicant since 1986 and that they often met each other at the Sikh Temple. Here, the affiant's statements are inconsistent with the applicant's statements in that, as noted earlier, the applicant has indicated that he has no affiliation or association with any church or organization in the United States. In addition, the affiant has failed to indicate where he met the applicant or that he regularly saw the applicant throughout the requisite period. The affiant has failed to provide any relevant and verifiable testimony, such as the applicant's specific place of residence in this country, to corroborate his claim of residence in the United States since before January 1, 1982. Because this affidavit is specifically lacking in detail and 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 from [REDACTED] in which she stated that she has known the applicant since 1988. Here, the affiant fails to specify how or where she met the applicant. She fails to specify the frequency with which she saw the applicant throughout the requisite period. The affiant has failed to provide any relevant and verifiable testimony, such as the applicant's specific place of residence in this country, to corroborate his claim of residence in the United States since before January 1, 1982. The affidavit 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 during the requisite period.

The applicant also submitted the following evidence with his Form I-687 dated 1992:

- A copy of a lease agreement bearing the applicant's name as tenant for the premises known as [REDACTED], Brooklyn, New York, beginning September 01, 1981 and ending August 31, 1984; and,
- A copy of a lease agreement bearing the applicant's name as tenant for the premises known as [REDACTED], New York, New York, beginning September 1, 1985 and ending August 31, 1988.

Here, although these documents are some evidence of the applicant's presence in the United States, the applicant has failed to submit documentation to demonstrate that he remained at the above noted addresses for the duration of the lease agreements.

In response to the director's Notice of Intent to Deny (NOID) dated November 22, 2005, counsel stated that many of the applicant's documents were destroyed in a recent fire and submitted the following attestations:

- An affidavit from [REDACTED] and [REDACTED] both dated December 28, 2005, in which each affiant stated that she has known the applicant since 1984 and 1985, respectively, when he worked at "laundry mate" in Brooklyn, New York. These statements are inconsistent with what the applicant indicated on his Form I-687 application, at part #33, regarding his employment history. Because the affidavits contain statements that conflict with what the applicant showed on his Form I-687 application, doubt is cast on the assertions made. Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. *See Matter of Ho*, 19 I&N Dec. at 591-592. The affiants have failed to indicate the frequency with which they saw the applicant during the requisite period. The affiants have failed to provide any relevant and verifiable testimony, such as the applicant's specific place of residence in this country, to corroborate his claim of residence in the United States since before January 1, 1982. Because these affidavits conflict with statements made by the applicant on his Form I-687 application and because they are specifically lacking in detail and probative value, they can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

The director noted in a second NOID issued on June 13, 2006 that the applicant had failed to submit evidence to support his contention that he has resided in the United States since June of 1981. She also noted that affidavits submitted by the applicant in response to the November 22, 2005 NOID appeared not to be credible or amenable to verification or were void of proof that the affiants had direct, personal knowledge of the events and circumstances surrounding the applicant's residency in the United States.

In response to the NOID dated June 13, 2006, counsel asserted that the affidavits from [REDACTED] and [REDACTED] were credible and amenable to verification.

In denying the application the director noted that the applicant had failed to address the issue concerning the lack of evidence to substantiate his claim of residency in the United States since June of 1981. The director further noted that the applicant had failed to submit evidence to rebut the Service's assertions. The director stated that the two affidavits noted above were not credible because the applicant did not list the "laundry mate" as a place of employment on his Form I-687 application, and that research showed that the "laundry mate" was not listed as a registered business in New York during that time period.

On appeal, counsel reasserts the applicant's claim of eligibility for temporary resident status. Counsel asserts that the director's actions in denying the application were an abuse of discretion, that the director used the wrong adjudication standard in reviewing the evidence, and that the discrediting of the two affiants was inaccurate. Counsel further asserts that the director erred in not considering the totality of the evidence and testimony that is contained in the record. The applicant does not submit any additional evidence on appeal.

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. The letter from [REDACTED] concerning the applicant's church membership and the employment letters noted above do not conform to regulatory standards for attestations by churches and employers. The affidavits submitted by the applicant's acquaintances are specifically lacking in detail and probative value. The affidavits submitted by [REDACTED] and [REDACTED] are inconsistent with statements made by the applicant on his Form I-687 application. There is nothing in the record of proceeding to demonstrate the authenticity of the copies of the lease agreements submitted by the applicant. The applicant has failed to submit any evidence on appeal sufficient to corroborate the assertions made by counsel. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, and the inconsistencies in the evidence discussed above, 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 reliance upon documents that are inconsistent with his statements made on his Form I-687 application, and are lacking in detail and 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.