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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
MSC-05-008-11460

Office: LOS ANGELES

Date: SEP 19 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. 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.

A handwritten signature in black ink, appearing to read "R. 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, 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. 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, the applicant asserts that the director did not provide sufficient reasoning or a clear explanation of why the case was denied. Through counsel, he submits a brief in support of his application, but does not submit any additional evidence.

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).

The applicant has the burden of proving by a preponderance of the evidence that he has resided in the United States for the requisite period. 8 C.F.R. § 245a.2(d)(5). To meet his burden of proof, an applicant must provide evidence of eligibility apart from his own testimony. 8 C.F.R. § 245a.2(d)(6). The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of documentation that an applicant may submit 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 did not submit any contemporaneous evidence of this nature pertaining to the requisite period.

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 8, 2004. 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 showed his first address in the United States to be [REDACTED] from October 1981 to September 1990.

The applicant submitted the following documentation:

- An affidavit signed by [REDACTED] who states that he is the owner of [REDACTED] Brothers Farm in Livingston, California. [REDACTED] states that the applicant was employed [REDACTED] Farm from 1982 until 1984 as a “seasonal farm worker during peak season,” and that he lived on the farm temporarily, working “on a seasonal basis as per our need.” The affiant further states that the company records are no longer available because they have been destroyed. The affidavit fails to meet certain regulatory standards set forth at 8 C.F.R. § 245a.2(d)(3)(i), which provides that letters from employers must include the applicant’s permanent address at the time of employment and exact period of employment. The statement by [REDACTED] does not state which season the applicant worked on his farm or provide the exact dates of his employment. Because the statement does not include much of the required information it will be afforded some weight as evidence of the applications residence in the United States at times from 1982 until 1984.
- Affidavit from [REDACTED] who indicates that he has been living in the United States since 1981. The affiant states that he has known the affiant since childhood and that he visited the applicant at his apartment in La Habra, California. He does not indicate how frequently he saw the applicant during the requisite period. His statement has some probative value in supporting the applicant's claim that he resided in the United States for the requisite period.
- Affidavit from [REDACTED] who indicates that he has personally known the applicant since November 1981 when the applicant helped him move into his new house. He indicates that they “kept in touch” after their initial meeting and that he “made courtesy calls” to the applicant’s residence in La Habra, California. He does not indicate how frequently he saw the applicant during the requisite period. His statement has some probative value in supporting the applicant's claim that he resided in the United States for the requisite period.
- Affidavit from [REDACTED] who indicates that he met the applicant at weekly religious congregations held at Gurudwara, in Los Angeles in October 1981. He further indicates that he visited the applicant at his residence in La Habra, California. He does not indicate how frequently he saw the applicant during the requisite period or provide any additional details of their relationship. His statement has some probative value in supporting the applicant's claim that he resided in the United States for the requisite period.
- Affidavit from [REDACTED] who indicates that she met the applicant at the [REDACTED] Temple at Alhambra in December 1981 and that she met the applicant “whenever we came to California from Cleveland, Ohio.” She also states that she “made courtesy calls” to the applicant’s residence in La Habra, California. She does not explain how frequently he saw the applicant, especially since she indicates that she lived in Ohio during the requisite period. She also fails to provide any additional details that would evidence her relationship with the applicant. Her statement has minimal probative value in supporting the

applicant's claim that he resided in the United States for the duration of the requisite period.

- Affidavit from [REDACTED] who indicates that he met the applicant at the Sikh Temple at Alhambra in December 1981. He indicates that they "often met at various other religious congregations," and that he also met the applicant at his residence in La Habra, California. He does not indicate how frequently he saw the applicant during the requisite period. His statement has some probative value in supporting the applicant's claim that he resided in the United States for the requisite period.
- Affidavit from [REDACTED], who indicates that he has only been living in the United States since 1985. He states that he and the applicant are childhood friends and that the applicant sent him many letters indicating his United States address. Neither the applicant nor the affiant submitted any of these letters as evidence in this application. He also indicates that he went to visit the applicant at his residence at La Habra, California when he returned from India in January 1988. Since he did not even reside in the United States until 1985, his statement provides minimal evidence of the applicant's continuous residence during the requisite period.

The director denied the application for temporary residence on March 17, 2006. In denying the application, the director noted that the evidence submitted by the applicant was insufficient to establish eligibility for the benefit sought. On appeal, the applicant asserts that he did arrive in the United States in 1981, and that the director did not articulate a clear explanation for denying the case.

While there is no specific regulation which governs what third party individual affidavits should contain to be of sufficient probative value, the regulations do set forth the elements which affidavits from organizations are to include. 8 C.F.R. § 245a.2(d)(3). These guidelines provide a basis for a flexible standard of the information which an affidavit should contain in order to render it probative for the purpose of comparison with the other evidence of record.

According to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3), a signed attestation should contain (1) an identification of the applicant by name; (2) the dates of the applicant's continuous residence to which the affiant can personally attest; (3) the address(es) where the applicant resided throughout the period which the affiant has known the applicant; (4) the basis for the affiant's acquaintance with the applicant; (5) the means by which the affiant may be contacted; and, (6) the origin of the information being attested to. See 8 C.F.R. § 245a.2(d)(3)(v).

While these standards are not to be rigidly applied, an application which is lacking in contemporaneous documentation cannot be deemed approvable if considerable periods of claimed continuous residence rely entirely on affidavits which are considerably lacking in such basic and necessary information. As discussed above, the affidavits of [REDACTED] Brothers and Mr. [REDACTED] have limited probative value. It is unclear when the applicant resided and worked at Pabla

Brother's Farm, whether he was merely a "seasonal worker" as stated by [REDACTED] in the affidavit, or whether he maintained a continuous residence in La Hamba. In his own affidavit, the applicant states that the La Hamba address was merely a "mailing address." It is also unclear, since the applicant stated that he only used the La Hamba address for mail, how the affiants [REDACTED] [REDACTED] visited him at this address from 1982 until 1984. As stated above, 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. *Matter of Ho*, 19 I&N Dec. at 59.

As discussed above, the affiants' statements are lacking in detail and do not establish that the affiants actually had personal knowledge of the events and circumstances of the applicant's residence in the United States. Further, this applicant has provided no contemporaneous evidence of residence in the United States relating to requisite period, and he has submitted inconsistent testimony and evidence pertaining to his employment and residence in the United States from 1982 until 1984.

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 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. It is therefore 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.