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U.S. Citizenship
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FILE: [REDACTED]
MSC-05-287-10992

Office: SEATTLE

Date: **SEP 22 2008**

IN RE: Applicant: [REDACTED]

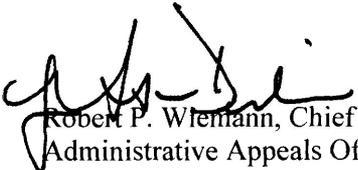
APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

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.


Robert P. Wiermann, 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, Seattle. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because he found that the evidence submitted with the application was insufficient to establish eligibility for Temporary Resident Status pursuant to the terms of the CSS/Newman settlement agreements.

On appeal, the applicant has submitted four additional affidavits from individuals claiming to have knowledge of the applicant's residence in the United States during the requisite period.

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) 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).

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 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, 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 he resided in the United States for the duration of the requisite period. Here, the applicant has not met his burden of proof.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on July 14, 2005. The record also contains three other Form I-687 applications submitted by the applicant, one submitted in April 1990 and two submitted in August 1990. The information contained in the earlier Form I-687 applications submitted by the applicant conflicts with information provided by the applicant in the instant Form I-687 application.

Part #30 of the Form I-687 application asked applicants to list all residences in the United States since first entry. On the instant Form I-687 application the applicant listed his residences as follows:

- [REDACTED] ose, California from November 1981 to October 1991; and
- [REDACTED] Washington from November 1991 until present.

The applicant also listed his residence as [REDACTED] on one of the Form I-687 applications which he signed on August 24, 1990. However, on the Form I-687 application the applicant signed on August 8 1990, he listed his residences as follows:

- [REDACTED], California from November 1981 until August 1987 and
- [REDACTED] California from October 1987 until “present.”

Further, on the Form I-687 application submitted by the applicant in April of 1990, he listed his residence as [REDACTED] from November 1981 to “present.” These are material inconsistencies which detract from the credibility of the applicant’s claim.

The record also contains the following statements and affidavits submitted by the applicant:

- Four affidavits from [REDACTED] dated February 1, 2007, May 19, 1997, August 25, 1990 and August 8, 1990. In three of these affidavits, the affiant states that the applicant resided with her at [REDACTED] California from 1981 until 1991. However, in the affidavit dated August 8, 1990 the affiant states that the

applicant “actually lives at [REDACTED] Based on this inconsistency, these affidavits lack credibility and will be given little weight as evidence of the applicant’s residence in the United States during the requisite period.

- An affidavit from [REDACTED] dated February 1, 2007. The affiant states that the applicant resided with the affiant at [REDACTED] from 1981 until 1991. This affidavit lacks details such as the nature of the affiant’s relationship with the applicant. It also fails to resolve the numerous discrepancies that exist in the record. Given these deficiencies, this affidavit will be given only minimal weight as evidence of the applicant’s residence in the United States during the requisite period.
- An affidavit from [REDACTED] dated May 19, 1997. The affiant states that the applicant came to the United States in November 1981 and that the applicant lived with him from November 1981 until August or September 1990. The affidavit lacks relevant details such as how the affiant came to know the applicant, or the nature of his relationship with the applicant. Lacking such probative details, the affidavit will be given minimal weight as evidence of the applicant’s residence in the United States during the requisite period.
- An affidavit from [REDACTED] dated January 31, 2007. The affiant states that he first met the applicant in India, and that the applicant and his family contacted the affiant when they arrived in the United States. The affiant further states that he and the applicant visited each other on numerous occasions. This affidavit lacks relevant detail such as the frequency or nature of the affiant’s contact with the applicant during the requisite period. Given the lack of probative detail, the affidavit will be given minimal weight as evidence of the applicant’s residence in the United States during the requisite period.
- An affidavit from [REDACTED] dated January 31, 2007. The affiant states that he has known the applicant and the applicant’s family “for the past twenty years.” The affiant states that he met the applicant when they were residing at [REDACTED] and that they would meet at various religious functions and family gatherings. This affidavit lacks probative details of the affiant’s relationship with the applicant, such as how he dates his initial acquaintance with the applicant or the nature and frequency of his contact with the applicant. In light of these deficiencies this affidavit has little probative value and will be given minimal weight as evidence of the applicant’s residence in the United States during the requisite period.
- An affidavit from [REDACTED] dated July 3, 2001. The affiant claims to have known the applicant for “many years” and states that the applicant worked for him beginning in 1990. The affiant does not claim to have personal knowledge of the applicant’s residence in the United States during the requisite period. The affiant does not provide details regarding the frequency or nature of his contact with the applicant during the requisite period. Given these deficiencies, the affidavit has little probative

value and will be given minimal weight as evidence of the applicant's residence in the United States during the requisite period.

- Two letters from [REDACTED] General Secretary of the Fremont Gurdwara Sahib. One letter is undated and the other is dated May 18, 1997. The undated letter states that the applicant "visited the gurdwara regularly from 1981." The letter from May 18, 1997 is less specific, and simply references the information provided in the undated letter. These letters fail to comply with the regulation for attestations by churches in that they fail to state the address where the applicant resided during the membership period and fail to establish how the author knows the applicant. 8 C.F.R. § 245a.2(d)(3)(v). Even absent compliance with the regulation, these letters are considered relevant documents under 8 C.F.R. §245a.2(d)(3)(iv)(L). See, *Matter of E-M- 20* I&N Dec. at 81. However, the letters lack probative details such as the frequency of the applicant's attendance at religious services during the requisite period. The letters therefore have minimal weight as evidence of the applicant's residence in the United States during the requisite period.
- An affidavit from [REDACTED] dated August 15, 2001. The affiant states that he has personal knowledge that the applicant has been residing in the United States since 1981. The affiant also states that he is related to the applicant, but does not describe the nature of the relation. The affiant also fails to provide any details regarding the nature and frequency of his contact with the applicant or the applicant's family during the requisite period. Lacking such probative detail, this affidavit will be given only minimal weight as evidence of the applicant's residence in the United States during the requisite period.
- An affidavit from [REDACTED] dated July 13, 2001. The affiant states that he has known [REDACTED] the applicant's father, since childhood. The affiant further states that he first saw [REDACTED] in the United States at the Fremont Sikh temple in 1984, and, following that, he saw [REDACTED] on various occasion. The affiant does not specifically reference any contact with the applicant, does not claim to have knowledge of the applicant's residence in the United States during the requisite details and does not provide any details regarding the nature and frequency of his contact with the applicant. Given these deficiencies, the affidavit has little probative value and will be given minimal weight as evidence of the applicant's residence in the United States during the requisite period.
- A written statement from [REDACTED] dated September 16, 2003. The declarant states that he first saw [REDACTED] the applicant's father, at Fremont Sikh temple in 1984. He further states that he saw [REDACTED] and his family on various occasions after that. The affiant does not claim to have personal knowledge of the applicant's residence in the United States during the requisite period. The affiant does not provide details regarding the frequency or nature of his contact with the applicant during the requisite period. Given these deficiencies, the affidavit has little probative value and will be given minimal

weight as evidence of the applicant's residence in the United States during the requisite period.

In addition, the applicant submitted affidavits from the following individuals in support of the Form I-687 application that he submitted in April of 1990: [REDACTED]. Each of these individuals claimed to have knowledge that the applicant resided at [REDACTED]. As this conflicts with information provided by the applicant on later Form I-687 applications, each of these affidavits lacks credibility. The applicant also submitted affidavits from [REDACTED] in support of the Form I-687 application that he submitted in April of 1990. Both affiants claim that the applicant performed gardening services for them during the requisite period. The applicant did not list any such employment on his instant Form I-687 application. In addition, these affidavits lack probative details such as how the affiants came to meet the applicant or how they date their initial acquaintance with the applicant. Given these deficiencies, these affidavits will be given only minimal weight as evidence of the applicant's residence in the United States during the requisite period.

The applicant also submitted a school record issued by [REDACTED] Co-education High School, along with an English translation of the document. According to this record, the applicant was given permission to leave school on March 31, 1981. The document was issued on November 22, 1989. The director found that this document contradicted the applicant's claim to have resided continuously in the United States since 1981. The applicant explained that his uncle obtained the certificate on his behalf; thus, the director's finding of a contradiction in this instance does not appear to be accurate. Still, the document merely shows that the applicant left school in India on March 31, 1981. This document does not indicate what the applicant did after he left school and does not indicate that he resided in the United States. This document will be given no weight as evidence of the applicant's residence in the United States during the requisite period.

The record also contains documents regarding the applicant's alleged employment with [REDACTED] Farms for approximately two months in 1984 and approximately two months in 1985. Some of these documents were initially submitted by the applicant in support of his Form I-485 Application to Adjust Status filed pursuant to the LIFE Act in March of 2002. The documents submitted by the applicant included copies of weekly time cards which cover the periods of April to June 1984 and May to July 1985. However, the director noted in the denial of the Form I-485 application that the weekly time cards appeared to have been "manufactured," because the publication date on the time card was 1998. The applicant submitted affidavits from [REDACTED] in an attempt to dispute the director's finding. These affidavits are inconsistent and fail to provide a plausible explanation for the discrepancy in the dates.

In an affidavit from [REDACTED] dated November 5, 2002, the affiant explains that he "completed this 1998 version of the "Weekly Time Cards" using employment records from 1984 and 1985 which I had at the time of completion." However, in an affidavit dated July 29, 2003, [REDACTED] states that "[t]he older version "Weekly Time Cards" got burnt when my house got on fire in August of 1998. I printed those new cards from memory since the old ones were destroyed in the fire." Finally, in an affidavit dated August 21, 2006, [REDACTED] states "I had a distinct

memory of [REDACTED] and his family having worked at the farm both in the summer of 1984 and 1985. The dates which I listed on the employment cards which I handed to [REDACTED] although perhaps not precise, were reconstructed from other information regarding those seasons.” Given the discrepancy between the publication date of the weekly time cards and the dates of employment listed on those cards, as well as [REDACTED] inability to provide a clear and consistent explanation for that discrepancy, the documents relating to the applicant’s employment with [REDACTED] lack credibility. As a result, these documents will not be given any weight as evidence of the applicant’s residence in the United States during the requisite period.

The record also contains a number of documents submitted by the applicant which fall outside the requisite period. These include copies of employment letters, Form W-2 Wage and Tax Statements and tax returns. As these documents are outside the requisite period they have no probative value with respect to the applicant’s residence in the United States during the requisite period.

In summary, the applicant has not provided sufficient evidence in support of his claim of residence in the United States relating to the entire requisite period. 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. Given the contradictory information in the record and the applicant’s reliance upon documents with little or no 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.