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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship and Immigration Services

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[Redacted]

FILE: [Redacted] MSC-06-098-18075

Office: SEATTLE

Date: SEP 23 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:

[Redacted]

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.

Ter 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, Seattle. 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 district 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, the director noted that the affidavits submitted by the applicant were not verifiable or credible. The director further noted that the affidavits did not establish the facts at issue, and that there was adverse/contradictory information in the file as it pertains to the affidavits. The director also noted that the Service was unable to contact the affiants in order to verify their statements. The director further noted that the applicant himself stated in a notarized affidavit dated December 22, 2006, that he was no longer in contact with the affiants due to the passage of time, and that he was unable to provide any additional evidence. 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 numerous affidavits from U.S. citizens and permanent residents that, although they were stated in laymen's terms, they were complete and specific as to the dates and types of relationships they had with the applicant. Counsel also asserts that the affidavits contain contact numbers for the affiants that the Service could use to verify the affiant's knowledge of the applicant's presence in the United States since 1981. The applicant does not submit any evidence on appeal.

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 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 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 January 6, 2006. On his Form I-687, Application for Status as a Temporary Resident, the applicant indicated at part #30 where he was instructed to list all of his places of residence, that he resided at [REDACTED] California from April of 1981 to October of 1986; and [REDACTED] Phoenix, Arizona from October of 1986 to November of 1988. The applicant also indicated at part

#33 of the application that he was employed by [REDACTED] as a farm worker in Mendota, California from April of 1981 to October of 1986; and by the India Delhi Palace in Phoenix, Arizona from October of 1986 to November of 1988.

In an attempt to establish continuous unlawful residence in the United States throughout the requisite period, the applicant submitted voluminous documentation. The record shows that the applicant submitted copies of his personal tax records, utility bills, his social security statement, his passport documents, bank statements, medical invoices, and an employment letter all dated from 1990 to 2001. The AAO finds that the documents submitted are some evidence of the applicant's residence in the United States beginning in 1990; however, this evidence cannot be afforded any evidentiary weight to establish that the applicant entered the United States prior to January 1, 1982 and resided in the United States during the requisite period.

The applicant also submitted the following attestations:

- An affidavit dated May 24, 1990 from [REDACTED] in which he stated that he was a farm labor contractor and that he employed the applicant as a farm laborer from April of 1981 to October of 1986. The affiant further stated that the applicant was paid in cash and that he used the money to pay for his rent and utilities while employed by him. Although generally consistent with the applicant's claim of employment as a farm worker during the requisite period, the affidavit does not conform to regulatory standards for attestations by employers, which are set forth at 8 C.F.R. § 245a.2(d)(3)(i). Specifically, the affiant fails to specify whether or not the information was taken from official company records, and he does not specify the address(es) where the applicant resided throughout the claimed employment period. In addition, the affiant fails to indicate where the company records are located and whether the Service may have access to the records. Furthermore, the record does not contain copies of personnel records, employee attendance rosters, Internal Revenue Service records or time cards that pertain to the requisite period to corroborate the assertions made by the affiant. Because this affidavit 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 dated July 13, 1990 from [REDACTED] in which he stated that he was the owner of an ice cream truck and that he employed the applicant from November of 1988 to March of 1990. Here, the period of employment is beyond the requisite period, and therefore, is irrelevant to the applicant's claim of continuous unlawful residence in the United States.
- Two affidavits dated July 13, 1990 from [REDACTED] in which he stated that he was the owner of Indian Deli Palace Cuisine located in Phoenix, Arizona and that he employed the applicant from October of 1986 to November of 1988. The affiant also stated that he has known the applicant for the last two years, and that the applicant was residing at [REDACTED] Arizona from October of 1986 to November of 1988. Here, the

affiant contradicts his own statements in that he stated that he has known the applicant for two years (1989-1990) but, claims that the applicant worked for him from 1986 to 1988. There has been no explanation given for this inconsistency. It is also noted that the affidavit does not conform to regulatory standards for attestations by employers, which are set forth at 8 C.F.R. § 245a.2(d)(3)(i). Specifically, the affiant does not specify layoff periods, the applicant's duties with the company, and whether or not the information was taken from official company records. In addition, the affiant fails to indicate where the company records are located and whether the Service may have access to the records. Furthermore, the record does not contain copies of personnel records, employee attendance rosters, Internal Revenue Service records, payroll records or time cards that pertain to the requisite period to corroborate the assertions made by the affiant. Because the statements are contradictory and because the affidavits do not conform to regulatory standards, they can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

- A fill-in-the-blank affidavit dated July 13, 1990 from [REDACTED] in which he stated that he was the applicant's friend and that he knows for a fact that the applicant resided at [REDACTED] in Cantua Creek, California from April of 1981 to October of 1986. Here, the affiant fails to indicate under what circumstances he met the applicant, the frequency with which he saw and communicated with the applicant, or any other detail that would lend credence to his claimed knowledge of the applicant and the applicant's residence in the United States during the requisite period. Because the affidavit is significantly lacking in detail, it can be afforded only minimal weight in establishing that the applicant resided in the United States during the requisite period.
- A fill-in-the-blank affidavit dated July 14, 1990 from [REDACTED] in which he stated that he and the applicant have lived in the same place since March of 1990. He also indicated that he had personal knowledge of the applicant residing in Cantua Creek, California from April of 1981 to October of 1985, and Phoenix, Arizona from October of 1985 to November of 1988. Here, the affiant fails to indicate under what circumstances he met the applicant and when, the frequency with which he saw and communicated with the applicant, or any other detail that would lend credence to his claimed knowledge of the applicant and the applicant's residence in the United States during the requisite period. Because the affidavit is significantly lacking in detail, it can be afforded only minimal weight in establishing that the applicant resided in the United States during the requisite period.
- A statement dated July 29, 2001 from [REDACTED] president of [REDACTED] in Fremont, California, in which he stated that the applicant is a member of the congregation and has been attending the Gurdwara Sahib on a continuous basis. He lists the applicant's address as [REDACTED] California. Here, the declaration does not conform to regulatory standards for attestations by organizations. Specifically, the letter does not state the dates of the applicant's membership, the address where the applicant resided during the requisite period, or the origins of the information attested to. 8 C.F.R.

§ 245a.2(d)(3)(v). Because this letter does not conform to regulatory standards, it can be accorded only minimum weight in establishing that the applicant resided in the United States during the requisite period.

- An affidavit dated May 20, 2002 from [REDACTED] in which he stated that he is a friend of the applicant's and that he has known the applicant since the affiant migrated to the United States in September of 1981. He further stated that he and the applicant have phoned one another and have visited with each other during the years. He also stated that the applicant has been employed by Fry's Electronics Company for the past several years. Here, the affiant fails to specify the applicant's dates of employment, and he fails to provide detail that would lend credence to his claimed knowledge of the applicant's residence in the United States during the requisite period. Because the affidavit is significantly lacking in detail, it can be afforded only minimal weight in establishing that the applicant resided in the United States during the requisite period.
- An affidavit dated September 3, 2002 from [REDACTED] in which he stated that the applicant is a family friend who has been living in the United States since 1981. He also stated that the applicant lived at [REDACTED] California from April of 1981 to October of 1986 and that he visited him at that address. He further stated that the applicant lived at [REDACTED] from October of 1986 to November of 1988 and that he kept in contact with him by phone. Here, the affiant fails to indicate under what circumstances he met the applicant, the frequency with which he saw and communicated with the applicant, or any other detail that would lend credence to his claimed knowledge of the applicant and the applicant's residence in the United States during the requisite period. Because the affidavit is significantly lacking in detail, it can be afforded only minimal weight in establishing that the applicant resided in the United States during the requisite period.
- An un-notarized, undated affidavit from [REDACTED] in which he stated that he is a friend of the applicant's and that the applicant has lived in the United States for a long time and currently resides at [REDACTED] California. He further stated that the applicant visited Vancouver, Canada from October to November of 1987. The affiant fails to specify when or where he met the applicant. He also fails to specify the frequency with which he saw and communicated with the applicant during the requisite period. Because the affidavit is significantly lacking in detail, it cannot be afforded any weight in establishing that the applicant resided in the United States during the requisite period.

In the instant case, the applicant has failed to submit sufficient evidence or argument to overcome the grounds for the director's denial. The affidavits, while providing some evidence of the applicant's presence in the United States, are insufficient to establish his continuous unlawful residence in the country throughout the requisite period.

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 reliance upon affidavits that fail to conform to regulatory standards 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.