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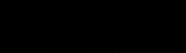
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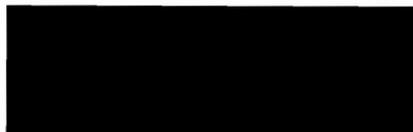
Office: LOS ANGELES

Date: **SEP 26 2008**

MSC-04-335-11177

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. 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. 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, and that 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 on August 30, 2004. 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 acknowledged that the applicant submitted affidavits from individuals who claimed to have knowledge of the beneficiary's residence in the United States during the requisite period, but noted that the applicant's credibility was diminished by contradictory information taken during his February 13, 2004 interview with Citizenship and Immigration Services (CIS). The director also noted other facts in the record which the director believed cast doubt on the credibility of the applicant's claim. 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 states, "there was no reason provided by the U.S. Citizenship and Immigration Service, to reject credible and direct testimony, or declarations that independently corroborates [redacted] presence in the United States from January 1, 1982 until December 1987. In fact, to bindly [sic] reject testimonial affidavits of witnesses, without any specific finding, for such rejection, is a violation of [redacted] rights, and can only result in speculation and conjecture, as no reason has been given, or provided, for rejecting the affidavits."

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 be 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.

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 periods, 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 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 reveals that the applicant has submitted the following documents:

- (1) Affidavit dated July 5, 2005 from [REDACTED], claiming that he has known the applicant since November 1982 when they met in Yuba City at an Indian function. The affiant claims that since that day they have seen each other at Indian cultural functions, Sikh temple and annual tournaments at Hayward. Although Mr. [REDACTED] claims to have personal knowledge that the applicant lived in the United States since November 1982, he does not state the address at which he knew him, nor does he state the frequency of their acquaintance during the requisite period.
- (2) Affidavit dated July 2, 2005 from [REDACTED] who indicates that he first met the applicant in June of 1984 at Sikh Temple in Fremont and that since that day, they

have remained in “constant contact . . . visiting each other on every family function as wedding and birthday party.” He also indicates that “. . . a couple of times we went to Reno, Hollywood and Las Vegas.” While the affiant identified the circumstances under which he met the applicant, he did not indicate how frequently he saw the applicant during the requisite period, apart from claiming that they were in “constant contact,” nor did he state that he has direct, personal knowledge that the applicant continuously resided in the United States. Thus, his affidavit does little more than confirm that the applicant was in the United States in 1984.

- (3) Affidavit dated July 23, 2005 from [REDACTED] who indicates that he first met the applicant in July of 1984 in San Francisco and that since that day, they have remained in “constant contact . . . visiting each other on every family function as wedding and birthday party.” The affiant does not indicate how he dates his acquaintance with the applicant, and he does not state that he has direct, personal knowledge of the applicant’s continuous residency in the United States for the duration of the requisite period.
- (4) Affidavit dated January 26, 2006 from [REDACTED] who indicates that he has known the applicant as a friend since 1982. He states that they meet each other every year since 1982 in Yuba City for the annual Sikh Parade and that they also meet occasionally at weddings, family functions, sports tournaments, and that they eat dinner together sometimes. While he does state that he has personal knowledge that the applicant has resided in the United States for the duration of the requisite period, does not indicate an address where the applicant resided during the requisite period, nor does he state how he dates their initial acquaintance.
- (5) A letter dated February 10, 2004 from the Sikh Temple Los Angeles, Sikh Study Circle, Inc. signed by [REDACTED], President and Chairman. [REDACTED] states that the applicant has been “coming to the Temple and doing various voluntary services in serving [REDACTED] to the Sunday Congregation and the homeless. I know him personally for last many years.” The declarant does not indicate that the applicant was a member of the Temple at any time during the requisite period. It is also noted that this letter does not conform to the statutory requirements for attestations by churches, unions, or other organizations, which is found at 8 C.F.R. § 245a.2 ((d)(3)(v)). That regulation requires such attestations to “show the inclusive dates of membership and state the address where the applicant resided during the membership period.” [REDACTED] does not provide dates of the applicant’s membership or any other information that is probative of the issue of his initial entrance into the United States prior to January 1981 or his continuous residence for the duration of the statutory period. Thus, the letter can be given no probative weight.
- (6) A second letter, dated June 27, 2005, from the Sikh Temple Los Angeles, Sikh Study Circle, Inc. signed by [REDACTED] President. [REDACTED] also states that the applicant has been “coming to the Temple and doing various voluntary

services in serving [REDACTED] to the Sunday Congregation and the homeless;" however, he notes that the applicant has been involved with the Temple since 1981 and that he has known him personally since 1981. This letter also fails to conform to the regulation 8 C.F.R. § 245a.2 (d)(3)(v) because it does not indicate the address where the applicant resided during the membership period.

- (7) Affidavit dated June 24, 2005 from [REDACTED] who indicates that he has known the applicant since 1984 as a friend and a person with whom he socializes. He states that they are involved in community and religious functions and gatherings together and that they see each other in Sikh Temple in Stockton, California for religious functions and in kitchen langerhall. He does not state that he has personal knowledge that the applicant resided in the United States for the duration of the requisite period, nor does he state how he dates their initial acquaintance.
- (8) Affidavit dated August 20, 2001 from [REDACTED] who indicates that he has known the applicant since 1983 and that they have seen each other at Indian cultural functions, Sikh Temple and annually held tournaments in Caruthers. Like the affiants described above, [REDACTED] does not state that he has personal knowledge that the applicant resided in the United States for the duration of the requisite period, nor does he state how he dates their initial acquaintance.
- (9) Receipts for payment to the Sikh Temple Los Angeles which are dated in October and November of 1987 and March 1988 and indicate [REDACTED] name.
- (10) Affidavit dated February 11, 2004 from [REDACTED] who indicates that he first met a Sikh Temple in North Hollywood in December 1981 and that they have remained in constant contact. He further indicates that the applicant attended religious service every Sunday until February 1983 when he moved to Capistrano Beach where he resided at [REDACTED] 1983 until 1995. His testimony provides some evidence of the applicant's continuous residency.
- (11) Affidavit dated February 5, 2004 from [REDACTED] who indicates that he has known the applicant since 1982 when they met in Gurwara in Yuba City. He indicates that he has seen the applicant and that they have seen each other at the annual Sikh Parade and that they also meet occasionally at weddings and family functions. Like the affiants described above, [REDACTED] does not state that he has personal knowledge that the applicant resided in the United States for the duration of the requisite period, nor does he state how he dates their initial acquaintance.
- (12) Affidavit dated February 7, 2004 from [REDACTED] who indicates that he has known the applicant since 1982 as both a business acquaintance and a friend. He indicates that he has seen the applicant at the annual Sikh Parade and that they also meet occasionally at weddings and family functions. Like the affiants described above, [REDACTED] does not state that he has personal knowledge that the

applicant resided in the United States for the duration of the requisite period, nor does he state how he dates their initial acquaintance.

- (13) Affidavit dated August 16, 2001 from [REDACTED] who indicates that the applicant "lived with me and shared monthly rent from December 1981 until 1986." He indicates his current address to be in Bakersfield, California but he does not indicate the address at which he lived with the applicant. Furthermore, on the applicant's Form I-687 he indicates at part #30 that he lived in [REDACTED] California from November 1981 until February 1983 when he moved to Capistrano Beach and remained until April 1991. The affiant does not provide corroborating evidence that he resided at the applicant's listed addresses for the duration of the requisite period, nor did he offer any details regarding the events and circumstances of the applicant's residence in the United States. The lack of detail is significant given the affiant's claim that he resided with the applicant for a period of more than six years.

On January 23, 2007 the director denied the application, noting that the record did not contain credible and verifiable evidence that the applicant continually maintained an unlawful status in the United States since before January 1, 1982 through 1988, as well as maintained continuous physical presence in the United States from November 6, 1986 through May 4, 1988. Specifically, the director noted the affidavits submitted did not conform to regulatory guidelines and offered insufficient evidence of continuous unlawful presence.

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 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 submitted affidavits are significantly 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. Few of the affiants provided much relevant information beyond acknowledging that they met the applicant in 1981 or that they saw him annually at the Sikh Parade in Yuba City. Overall, the affidavits provided are so deficient in detail that they can be given no significant probative value. Further, this

applicant has provided very little contemporaneous evidence of residence in the United States relating to requisite period. 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 591.

Furthermore, the director noted that during his February 13, 2004 interview with CIS the applicant indicated that his only absence from the United States was in June 1987 when he briefly departed the United States to attend a wedding in Vancouver, Canada returning later the same month. The applicant indicated that his wife joined him in Canada for the wedding and returned to India, and that during this reunion, the daughter was conceived. The record reveals that the applicant's daughter was born in India on [REDACTED] nearly 11 months after the applicant and his wife were reunited at the wedding.

When confronted with this inconsistency, the applicant noted that his wife entered the United States illegally for two months in 1987 and then returning to India. He also noted that he forgot to inform CIS of this fact during his interview.

It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). 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. The applicant has not provided any independent, objective evidence with regard to the inconsistency noted.

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. Given the applicant's reliance upon affidavits with minimal probative value it is 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.

