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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: LOS ANGELES Date: AUG 08 2007

MSC-05-236-13768

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. 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 is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined the applicant had not met his burden of proving eligibility for temporary resident status by the preponderance of the evidence. As a result, the director denied the application for temporary resident status.

On appeal, the applicant requested reconsideration of the denial of his application. Specifically, the applicant questioned whether the director overlooked an affidavit submitted by the applicant, restated statutory requirements regarding affidavits, and resubmitted evidence supporting his claim of class membership.

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 Immigration and Nationality Act (Act), 8 U.S.C. § 1255a(a)(2).

An applicant for adjustment to temporary resident status must 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).

For purposes of establishing residence and presence in accordance with the regulation at 8 C.F.R. § 245a.2(b), "until the date of filing" shall mean until the date the applicant attempted to file a completed Form I-687 application and fee or was caused not to timely file, consistent with the class member definitions set forth in the CSS/Newman Settlement Agreements. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

An applicant for adjustment of status 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 and 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.* 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 (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 from prior to January 1, 1982 through the date he attempted to file a Form I-687 application with the Service in the original legalization application period of May 5, 1987 to May 4, 1988. Here, the submitted evidence is not relevant, probative, and credible.

The record shows that the applicant submitted a Form I-687 application and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to Citizenship and Immigration Services (CIS) on May 24, 2005. 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 listed the following address during the statutory period after a correction was made at the interview with an immigration officer: [redacted], Whittier, California from January 1980 to February 1, 1990.

The record also includes several form affidavits submitted in support of the application. The applicant submitted two affidavits from [redacted] In the first affidavit, dated March 21, 1990, [redacted] confirmed that to his personal knowledge the applicant has resided in the United States as follows: Los Angeles, California from 1986 to the present time. The affiant also stated, "I have known the applicant since 1986. We have been good friends and he knows my family well. We keep in touch weekly." This affidavit calls into question the applicant's claim to have resided in the United States since prior to January 1, 1982. In the second affidavit from [redacted] dated March 26, 1990, the affiant stated that he has first-hand knowledge of the applicant since 1981 and that he has been aware of the applicant's continuous residency in the United States since the above date. This affidavit does not include an explanation of the nature of the affiant's acquaintance with the applicant. As a result, it is found to be lacking in detail. In addition, this affidavit is found to be inconsistent with the first affidavit. This inconsistency calls into question the affiant's ability to confirm the applicant's residence throughout the statutory period.

The applicant also submitted two affidavits from an individual named [redacted] In the first affidavit, dated March 21, 1990, the affiant confirmed that, to his personal knowledge the applicant has resided in the United States as follows: Los Angeles, California from 1986 to the present time. The affiant also stated, "I have been acquainted with the applicant since 86. The three years and a half that I know him, we became friends and of my family too." This affidavit calls into question the applicant's claim to have resided in the United States since prior to January 1, 1982. In the second affidavit from [redacted] dated March 26, 1990, the affiant stated that he has first hand knowledge of the applicant since 1981 and that he has been aware of the applicant's continuous residency in the United States since the above date. This affidavit does not include an explanation of the nature of the affiant's acquaintance with the applicant. As a result, it is found to be lacking in detail. In addition, this affidavit is found to be inconsistent with [redacted]s first affidavit. This inconsistency calls into question the affiant's ability to confirm the applicant's residence throughout the statutory period.

The applicant also submitted two affidavits from [redacted] In the first affidavit, dated March 21, 1990, the affiant confirmed that to his personal knowledge the applicant has resided in the United States as follows: Los Angeles, California from August 1987 to the present time. The affiant also stated, "I have known the applicant all my life, he is my cousin, and we have been very close family since he has been here in U.S. 1987/present." This affidavit calls into question the applicant's claim to have resided in the United States since prior to January 1, 1982. In the second affidavit, dated March 26, 1990, the affiant stated that he has first hand knowledge of the applicant since 1981 and that he has been aware of the applicant's continuous residency in the United States since the above date. This affidavit does not include an explanation of the nature of the affiant's relationship with the applicant. Specifically, the affidavit does not identify the affiant as the applicant's cousin. As a result, it is found to be lacking in detail. In addition, this affidavit is found to be inconsistent with [redacted]s first affidavit, in which the affiant confirmed the applicant's residence in the United States since 1981.

The director issued a Notice of Intent to Deny (NOID) on May 15, 2006, which questioned whether the applicant was a member of the class eligible to apply for legalization under 8 U.S.C. § 1255a, pursuant to the CSS/Newman settlement agreement. A notation in the file indicates that the applicant's class membership was accepted as a result of the response to the NOID. In response to the NOID, the applicant provided copies of affidavits he had already submitted, together with an affidavit from [redacted] Upple dated May 2, 2005. In this affidavit, the affiant confirmed having met the applicant at the Sikh temple in Los Angeles in 1981. The affiant also stated, "I provide my taxes/d[r]iver license for 1981 to 1988 to verify my presence and residency in Southern California . . . ." It is noted that copies of the affiant's identification and tax documentation are not found in the record.

In denying the application the director questioned the probative value of the affidavits submitted by the applicant. The director found that the applicant did not prove eligibility by a preponderance of the evidence. The director also mentioned the question of the applicant's eligibility to apply for legalization. Here, the director adjudicated the Form I-687 application on the merits. As a result, the director is found not to have denied the application for class membership.

On appeal, the applicant requested reconsideration of the denial of his application. Specifically, the applicant questioned whether the director overlooked an affidavit submitted by the applicant,

restated statutory requirements regarding affidavits, and resubmitted evidence supporting his claim of class membership. The applicant also provided additional evidence supporting his claim of class membership. He provided an affidavit from the individual who served as interpreter during the interview with an immigration officer, which explained that the interpreter had made an error in interpretation. Lastly, the applicant referenced the "determination of the legalization adjudicator named [redacted] in the year 1990 in favor of the applicant." It is noted that the record indicates this decision was made regarding only the applicant's class membership, and not his eligibility for legalization.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the 1981-88 period, and has submitted affidavits that fail to support his claim and conflict with each other and with the applicant's claim. Specifically, the applicant provided three affidavits dated March 26, 1990 confirming his residence in the United States since 1981 but lacking sufficient detail. The applicant also provided an earlier affidavit from each affiant that confirms the affiant did not know the applicant for the entire statutory period, although the affiants claimed to have knowledge of the applicant since 1981 in the later affidavits. In an affidavit dated March 21, 1990, [redacted], the applicant's cousin, stated specifically that the applicant has been in the United States since 1987. Although not required, the applicant also failed to provide additional documentation of the affiant's identities or presence in the United States during the statutory period. The affidavit of [redacted] indicated such documentation would be submitted with the affidavit, yet this documentation was not found in the record.

The absence of sufficiently detailed and consistent 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 statements contained in the supporting affidavits, and the applicant's reliance upon documents 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.