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

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[redacted]

FILE: [redacted] Office: LOS ANGELES Date: JUN 20 2007

MSC 05 218 13006

IN RE: Applicant: [redacted]

PETITION: 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. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if the matter 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 that the applicant had not demonstrated that he had entered the United States before January 1, 1982, and that he resided in a continuous unlawful status, except for brief absences, from before 1982 until the date he was turned away by the INS when he tried to apply for legalization. The director also determined that the applicant had not demonstrated that he was continuously physically present in the United States, except for brief, casual and innocent departures, from November 6, 1986 until the date he was turned away by the INS when he tried to apply for legalization. Lastly, the director determined that the applicant had not demonstrated he was admissible as an immigrant. The director referred to inconsistencies among statements the applicant made during his interview with a CIS officer, on his Form I-687 application, and on an earlier filed Form G-325A. The district director concluded that the applicant failed to provide documentation establishing his eligibility for Temporary Resident Status and denied the application.

On appeal, the applicant objected to the director's characterization of the applicant's statements in the CIS interview. The applicant indicated he had requested his statements not be included in the record. Lastly, the applicant offered an explanation of the inconsistencies between his statements on the Form I-687 and the Form G-325A.

An applicant for temporary residence 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. *See* section 245A(a)(2) of the Immigration and Nationality Act (Act), 8 U.S.C. § 1255a(a)(2) and 8 C.F.R. § 245a.2(b).

An alien applying 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. *See* section 245A(a)(3) of the Act and 8 C.F.R. § 245a.2(b)(1).

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 alien 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. *See* Paragraph 11, page 6 of the CSS Settlement Agreement and paragraph 11, page 10 of the Newman Settlement Agreement.

An alien applying 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, its credibility and amenability to verification. *See* 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 including affidavits is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The regulation at 8 C.F.R. § 245a.2(d)(3)(v) states that attestations by churches, unions, or other organizations to the applicant's residence by letter must: identify applicant by name; be signed by an official (whose title is shown); show inclusive dates of membership; state the address where applicant resided during membership period; include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; establish how the author knows the applicant; and, establish the origin of the information being attested to.

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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to establish continuous residence 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 from May 5, 1987 to May 4, 1988, and whether the applicant has submitted sufficient credible evidence to establish continuous physical presence in the United States since November 6, 1986. 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 CIS on April 26, 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 [redacted] West Hills, California, August 1981 to April 1982; [redacted]

[redacted] Canoga Park, California, May 1982 to December 1984; and [redacted], Los Angeles, California from January 1985 to May 1989. At part #31 where applicants were to list all affiliations or associations, clubs, organizations, churches, unions, businesses, etc., the applicant did not list any affiliations. At part #32 where applicants were asked to list all previous absences from the United States since entry and dating back to January 1, 1982, the applicant listed a trip to India for a family emergency from June 1987 to July 1987. The applicant listed no other absences from the United States. At part #33 where applicants were asked to list all employment in the United States since entry and dating back to January 1, 1982, the applicant listed Dominos Pizza from September 1981 to May 1982, Unocal 76 from June 1982 to December 1984, and Seven Eleven from February 1985 to January 1992. The applicant listed no other employment and he provided no supporting documentation of this employment.

The applicant also submitted three unsigned form declarations from [redacted] and [redacted] The declaration for [redacted] states that the declarant has known the applicant since December 15, 1981 when they met on the telephone. [redacted] is located in Canada and has lived there since January 1982. The declarant stated "applicant used to call me on [the] phone and discussed religious and cultural activity of common interest." The declaration does not indicate the declarant had first-hand knowledge that the applicant was present in the United States during the statutory period. Specifically, the declaration only indicates that the declarant received telephone calls from the applicant and does not specify whether the declarant met the applicant in the United States or contacted him by telephone in the United States. The declarant provided a copy of his Canadian driver's license, but did not submit any evidence that he was in the United States during the statutory period. In fact, the declaration includes statements regarding the declarant's presence in Canada during the statutory period.

The declaration of [redacted] explains that the declarant met the applicant on October 10, 1981 at Sikh Temple in Los Angeles, California. The declarant included no identity documentation or supporting evidence that he was in the United States during the statutory period. The declaration includes the statement "I used to meet applicant in Sikh Temple almost every weekend . . . . " However, it is noted that the applicant included no official documentation of his attendance at Sikh Temple, and did not list Sikh Temple as an affiliation on his Form I-687. In his declaration, [redacted] stated that he met the applicant on January 15, 1982 at the Vermont Sikh Temple. This declaration provides very little detail regarding the declarant's contacts with the applicant. The declarant included a copy of his driver's license but did not submit any supporting documentation of his presence in the United States during the statutory period or his relationship with the applicant. It is noted that the applicant included no official documentation of his attendance at Vermont Sikh Temple and did not list the Vermont Sikh temple as an affiliation on his Form I-687.

The record shows that the applicant was subsequently interviewed relating to his Form I-687 application on March 3, 2006. The applicant was accompanied by his attorney, [redacted] The notes of the interviewing officer indicate that the applicant stated he entered the United States in August 1981. The officer explained in the interview that the applicant had provided a Form G-325A to the Service at an earlier date. The Form G-325A was provided in connection with the I-485 Application to Register Permanent Residence or Adjust Status the applicant filed with an I-130 Alien Relative Petition submitted on his behalf in 1996. The officer explained at the CIS interview and the record indicates that on Form G-325A, where the

applicant was asked for his last address outside the United States of more than one year, the applicant indicated he was living in India from April 1968 to January 1989. At the CIS interview, the officer asked the applicant if this information was correct as listed on the Form G-325A. The applicant stated, "yes." The officer explained at the interview and the record indicates that on the Form I-130 filed on the applicant's behalf February 1989 is listed as the applicant's date of arrival in the United States. At the CIS interview, the officer asked the applicant to confirm that February 1989 was his first date of entry into the United States. The applicant stated, "yes." At the CIS interview, the applicant was asked to provide a sworn statement of the above responses. Upon the advice of his attorney, the applicant chose not to comply with this request.

The district director determined that the applicant had failed to submit sufficient evidence establishing his continuous residence in this country since prior to January 1, 1982, establishing his continuous physical presence except for brief, casual, and innocent departures, from November 6, 1986 to the date he attempted to apply for legalization, and establishing his admissibility as an immigrant. Therefore, she denied the application on March 4, 2006.

In the notice of decision, the director noted the discrepancies between the applicant's statements in the Form I-687 and his statements in the CIS interview and the Form G-325A. The director also noted that the applicant had filed a prior Form I-687 Application for Legalization pursuant to the CSS/Newman settlement agreements. The applicant's first Form I-687 was signed by him on July 22, 1990 and was later withdrawn by the applicant. In connection with this application, the applicant submitted an employment confirmation letter from [redacted] of Turf Masters. This letter confirmed that the applicant was employed by Turf Masters from September 1981 to August 1990. The letter stated, "Our records reflect this employee maintained separate primary employment during the time he was employed with our company and his employment with us was secondary employment on a seasonal and part time basis only." It is noted that the applicant did not list employment with Turf Masters on the Form I-687 he submitted in 1990 or on the Form I-687 he submitted in 2005.

The record indicates the applicant also filed a Form I-485 Application to Register Permanent Residence or Adjust Status on December 20, 2001. The applicant was interviewed in connection with this application on January 7, 2003. At this interview, the applicant signed a sworn statement that he went to India for three to four months but did not remember the exact dates. It is noted that no three-month trip was listed on the applicant's most recent Form I-687.

On appeal, the applicant objected to the director's characterization of the applicant's statements in the CIS interview. The applicant indicated he had requested his statements not be included in the record. Lastly, the applicant offered an explanation of the inconsistencies between his statements on the Form I-687 and the Form G-325A. Specifically, the applicant explained, "the information on G-325 gives the starting and ending dates correctly. However, it does not take into account the fact that I did come to the US in August 1981. During this period I was temporarily in India in January 1989 for a brief period of less than 30 days." This explanation is found to be unreasonable under the circumstances. The applicant specified on Form G-325A that his last address abroad was in India from 1968 to 1989. The applicant failed to sufficiently explain why he would record his address in this way if he had only returned to India for a brief period in 1989, and had otherwise been in the United States continuously since 1981. He also failed

to provide sufficient explanation of his responses to the officer's questions in the CIS interview that confirmed the information provided by him on Form G-325A. The applicant also indicated on his Form I-687 that he made a visit to India from June to July of 1987, but mentioned no other trips to India. The applicant provided no explanation for his failure to mention the 1989 visit to India on his Form I-687.

The fact that the applicant's statements on his Form I-687 directly contradict statements on other official forms submitted to the Service, as well as statements made by the applicant in his CIS interview, confirms that the applicant made material misrepresentations in an attempt to establish residence within the United States for the requisite period.

Section 212(a)(6)(C) of the Act provides:

> Misrepresentation. – (i) In general. – Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

By engaging in such action, the applicant has negated his own credibility as well as the credibility of his claim of continuous residence in this country for the period from prior to January 1, 1982 to May 4, 1988 and continuous physical presence since November 6, 1986. In addition, the applicant rendered himself inadmissible to the United States under any visa classification, immigrant or nonimmigrant, pursuant to section 212(a)(6)(C) of the Act by committing acts constituting willful misrepresentation.

In summary, the applicant has provided evidence of residence in the United States relating to the 1981-88 period in a manner that is found to constitute willful misrepresentation, and has submitted affidavits that lack sufficient detail and conflict with the applicant's testimony. Specifically, the applicant provided three unsigned declarations. None of these declarations are accompanied by documentation of the declarant's presence in the United States during the statutory period or relationship to the applicant. One of the declarants only knew the applicant by telephone and indicated he resided in Canada throughout the statutory period. The other two declarants stated they met the applicant at a Sikh temple, but the applicant did not indicate affiliations with any temples on the Form I-687. The applicant submitted an employment confirmation letter for his first I-687 filing that is inconsistent with both I-687 forms he filed. In his interview for his Form I-485 application, the applicant mentioned and signed a sworn statement regarding a lengthy trip to India not listed on his most recent Form I-687. In an earlier submitted G-325A, the applicant stated his last address in India and provided the dates from April 1968 to January 1989. The applicant's Form I-130 stated the applicant arrived in the United States in February 1989. Neither of these statements was consistent with the Form I-687, but the applicant confirmed both of these statements in the CIS interview, and then refused to sign a sworn statement at the advice of his attorney. The applicant provided no satisfactory explanation for these inconsistencies on appeal and provided no additional supporting documentation. As a result, the statements made by the applicant on Form I-687 that conflict with his statements in the CIS interview and in his earlier filed Form G-325A are found to constitute willful misrepresentation. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the

application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

The absence of sufficiently detailed supporting documentation and the existence of derogatory information that establishes the applicant made material misrepresentations all seriously undermine the credibility of the applicant's claim of residence in this country for the requisite period, as well as the credibility of the documents submitted in support of such 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, and its credibility and amenability to verification. The applicant has failed to submit sufficient credible documentation to meet his burden of proof in establishing that he has resided in the United States since prior to January 1, 1982 to May 4, 1988 and was continuously physically present since November 6, 1986 by a preponderance of the evidence as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M-*, 20 I&N Dec. 77 (Comm. 1989).

Given the applicant's reliance upon documents with minimal or no 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 May 4, 1988 as required under section 245A(a)(2) of the Act and continuous physical presence since November 6, 1986 as required under section 245A(a)(3) of the Act. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis.

In addition, the fact that the applicant made material misrepresentations in an attempt to establish his residence within the United States for the requisite period rendered him inadmissible to this country pursuant to section 212(a)(6)(C) of the Act. By filing the instant application, the applicant has sought to procure a benefit provided under the Act through willful misrepresentation of a material fact. This finding of misrepresentation shall be considered in the current proceeding as well as any future proceeding where admissibility is an issue. The applicant failed to establish that he is admissible to the United States as required by 8 C.F.R. § 245a.2(d)(5). Consequently, the applicant is ineligible to adjust to temporary residence under section 245A of the Act on this basis as well.

ORDER: The appeal is dismissed with a finding of misrepresentation. This decision constitutes a final notice of ineligibility.

FURTHER ORDER: The AAO finds that the applicant willfully misrepresented a fact material to his eligibility for a benefit sought under the immigration laws of the United States. Accordingly, he is inadmissible under section 212(a)(6)(C) of the Act.