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FILE: [Redacted]
MSC-05-053-10034

Office: SACRAMENTO

Date: **OCT 10 2007**

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:



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

The director initially issued a decision that mistakenly indicated the applicant had failed to respond to the Notice of Intent to Deny (NOID). The director issued a new decision on February 3, 2006 in which he determined the applicant had failed to demonstrate that it is probable that he resided continuously in the United States throughout the statutory period. The director also determined that evidence in the record shows that the applicant did not maintain continuous physical presence in the United States throughout the statutory period. As a result, the director denied the application.

On appeal, the applicant explained the difficulty in recalling the exact dates of his absences from the United States after the passage of time, indicated that his paperwork may include errors because he was misled by immigration consultants, and listed the contributions he has made to his community in the United States.

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 Immigration and Naturalization Service (INS) 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 November 22, 2004. 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 addresses during the requisite period: [REDACTED] 979 to December 1980; [REDACTED] January 1981 to April 1987; [REDACTED] San Jose, California, August 1987 to May 1990. At part #31 where applicants were asked to list all affiliations or associations, clubs, organizations, churches, unions, businesses, etc., the applicant listed only Sikh Temple, Sacramento, California, from 1990 to present. At part #32 where applicants were asked to list all absences from the United States since entry, the applicant listed the following absences during the requisite period: a trip to Canada and India to visit family from September 1982 to October 1982; and trips to Canada to visit family from October 1984 to November 1984 and during May 1987. At part #33 where applicants were asked to list all employment in the United States since entry, the applicant listed only the following position during the requisite period: self-employed selling t-shirts, hats, and handy crafts in San Jose, California from 1979 to 1990.

The applicant included multiple documents with his Form I-687 application. He included copies of a stamp indicating entry into the United States on July 25, 1979 and a B-2 visa stamp from the United States issued in London and valid from July 24, 1979 to January 24, 1980. The applicant also included an affidavit from [REDACTED], which states that the affiant has personally known the applicant since they met in 1960 in India, that he met the applicant in India at the airport when he left for England in September 1963, that he lost touch with the applicant until he met the applicant again at Sikh Temple in Fremont, California in January 1987, and that the affiant has been in touch with the applicant since January 1987. This affidavit fails to confirm the applicant resided in the United States during the requisite period.

The applicant included an affidavit from [REDACTED] which states that the affiant has personally known the applicant since 1983, that he supplied merchandise to the applicant from 1983 to 1990. This affidavit also fails to confirm the applicant resided in the United States during the requisite period. The applicant also included a letter from [REDACTED] Chairman of the Executive Committee of the Sikh Temple, Sacramento. This letter is dated October 15, 2004, and confirms Mr. [REDACTED] has known the applicant for over 18 years, the applicant has been visiting Sikh Temple Sacramento since 1986, and he has been a member in good standing since 1990. This letter also fails to specifically confirm the applicant resided in the United States during the requisite period. In addition, this letter fails to conform to regulatory standards for attestations by churches, unions or other organizations. Specifically, the letter does not state the address where the applicant resided during the membership period, or establish how the author knows the applicant, establish the origin of the information being attested to. 8 C.F.R. § 245a.2(d)(3)(v). The applicant also included copies of receipts from the Sikh Temple Sacramento. These receipts do not include the applicant's address. Therefore, they do not serve as evidence of the applicant's residence during the requisite period.

In response to a NOID issued on July 1, 2005, the applicant explained that he took a trip to India in 1987 to see his father on his deathbed. He explained the difficulty of remembering with precision after the passage of time. The applicant also stated that his total absences from the United States were nowhere close to 180 days and that the dates he had provided were approximate calculations and not accurate. Lastly, the applicant reviewed his contributions to his community.

The record also includes a Form I-485 Application to Register Permanent Resident or [REDACTED] filed on July 24, 2001. With this application, the applicant included a letter from [REDACTED]. In this letter, the declarant stated that he shared lodging with the applicant at [REDACTED] Francisco, during 1986 and 1987, and then at [REDACTED], San Jose, until the applicant moved to Sacramento in 1990. This letter is consistent with the information provided on Form I-687. However, the declarant's signature is not notarized. As a result, the evidentiary weight of the letter is limited. In addition, although not required, the declarant failed to include copies of documentation of his identity or presence in the United States during the requisite period.

The applicant also included a letter from [REDACTED] in which the declarant stated that the applicant was present in the Bay Area during the years of 1986 to 1990 because the declarant used to meet the applicant at Sikh Temple in Fremont, California almost every Sunday. The evidentiary weight of the letter is limited because the declarant's signature is not notarized. In addition, the

letter appears to be inconsistent with the information provided on Form I-687. Specifically, where asked to list affiliations and associations at part #31, the applicant listed a Sikh temple in Sacramento but failed to list a Sikh temple in Fremont, California.

Lastly, the applicant included a list of departures and returns from all absences from the United States. The list included the following absences from the United States during the requisite period, each of which involved visits to Canada: September 1, 1982 to October 15, 1982; October 10, 1984 to November 30, 1984; and May 10, 1987 to May 30, 1987. The visit from October 10, 1984 to November 30, 1984 totaled 51 days. According to 8 C.F.R. § 245a.2(h)(1), an applicant for temporary resident status shall be regarded as having resided continuously in the United States if, at the time of filing of the application, no single absence from the United States has exceeded 45 days, and the aggregate of all absences has not exceeded 180 days between January 1, 1982 through the date the application for temporary resident status is filed, unless the applicant can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed. 8 C.F.R. § 245a.2(h)(1). Since the applicant indicated in the list he provided with Form I-485 that one absence during the requisite period exceeded 45 days, and he failed to establish emergent reasons that delayed his return. The explanation on appeal involving the difficulty recalling specific dates and indicating the dates listed were not accurate fails to overcome the evidence that one of the applicant's absences exceeded 45 days. Therefore, the applicant is found not to have resided continuously in the United States throughout the requisite period.

In response to a request for additional information in support of his Form I-485 application, the applicant submitted an affidavit from [REDACTED]. In this affidavit, [REDACTED] stated that he has personally known the applicant since 1984. He stated that the applicant was living in San Francisco and was self-employed selling t-shirts and other handicraft items. This affidavit fails to confirm the applicant resided in the United States at any time during the requisite period except 1984. In addition, the affidavit does not list the applicant's addresses during the requisite period. As a result, it is found to be lacking in detail.

The record also includes a Form I-687 application dated September 10, 1990. At part #34 where applicants were asked to list all affiliations or associations with clubs, organizations, churches, unions, businesses, etc., the applicant listed the [REDACTED] in Fremont, California from 1981 to present. This is inconsistent with the information provided on the current Form I-687. Specifically, where applicants were asked at Part #31 to list affiliations and associations, the applicant failed to list the Sikh Gurudwara in Fremont. In addition, the applicant listed his address on the current Form I-687 from August 1979 to December 1980 as [REDACTED] California, which indicates the applicant's affiliation with the Gurudwara at the same address actually began in August 1979 or earlier, as opposed to in 1981 as indicated on the Form I-687 dated September 10, 1990.

With this Form I-687 the applicant included multiple declarations. In his undated declaration, [REDACTED] stated that he has known the applicant, who resides at [REDACTED] California, since 1981. [REDACTED] stated that he has first-hand knowledge of the applicant's continuous residence in California because he met the applicant at the Sikh Temple Fremont most Sundays. The evidentiary weight of this letter is limited because it is not dated. Specifically, the letter does not clearly confirm

the applicant resided in the United States during the requisite period because it only refers to the year 1981. In addition, the letter is inconsistent with the information provided in the current Form I-687, where the applicant failed to indicate he was affiliated with the Sikh temple in Fremont, California. Instead, the applicant listed an affiliation with the Sikh temple in Sacramento. This inconsistency calls into question whether the applicant resided in the United States during the requisite period.

The applicant also provided a letter from [REDACTED] printed on [REDACTED] (San Francisco Bay Area) letterhead. In this letter, [REDACTED] stated that the applicant is a member of the Sikh temple and has been visiting the temple since 1981. The evidentiary weight of this letter is limited because it is undated. As a result, it does not specifically confirm the applicant resided in the United States during the requisite period. In addition, this letter does not conform to regulatory requirements for attestations by churches, unions or other organizations. Specifically, the letter is not signed by an official whose title is shown, does not show inclusive dates of membership, does not establish how the author knows the applicant, and does not establish the origin of the information being attested to. 8 C.F.R. § 245a.2(d)(3)(v).

The record includes an additional Form I-687 application dated May 2, 1990. At part #33 where applicants were asked to list all of their residences in the United States since entry, the applicant listed the following addresses during the requisite period: [REDACTED] California from March 1981 to March 1986; [REDACTED] California from April 1986 to June 1987; and [REDACTED] California from July 1987 to present. The addresses provided in this Form I-687 are entirely inconsistent with the addresses the applicant provided on the current I-687. These inconsistencies call into question whether the applicant actually resided in the United States during the requisite period. At part #34 where applicants were asked to list all affiliations or associations with clubs, organizations, churches, unions, businesses, etc., the applicant stated "None." This information is inconsistent with the information provided on other forms and letters provided by the applicant that indicate he was affiliated with Sikh temples in both Sacramento and Fremont, California. At part #35 where applicants were asked to list all absences from the United States since entry, the applicant listed a trip to India to visit family from June 1, 1987 to July 7, 1987. This information is inconsistent with all the other information the applicant provided regarding his departures from the United States during the requisite period. Specifically, on the current Form I-687 the applicant indicated multiple absences from the United States during the requisite period, but his only absence in 1987 was a trip to Canada during May 1987. In addition, the list of absences the applicant provided with his Form I-485 indicates he took multiple trips during the requisite period. However, the only trip listed during 1987 was a trip to Canada in May 1987. These inconsistencies all call into question whether the applicant continuously resided in the United States during the requisite period.

In denying the application, the director referenced statements by the applicant indicating he departed the United States every four or five months to see his family in Canada and characterizing these departures as regular visits to see his wife and children. The director found the applicant failed to demonstrate it is probable that he resided continuously in the United States throughout the statutory period. The director also found that the applicant did not maintain continuous physical presence in the United States throughout the statutory period.

On appeal, the applicant explained the difficulty in recalling the exact dates of his absences from the United States after the passage of time, indicated that his paperwork may include errors because he was misled by immigration consultants, and listed the contributions he has made to his community in the United States.

In summary, the applicant has only provided contemporaneous evidence that does not confirm he resided in the United States during the requisite period; has submitted multiple applications that conflict with each other; and has submitted affidavits and letters that lack sufficient detail, conflict with the applicant's statements, or do not conform to regulatory requirements. Specifically, the affidavits from [REDACTED] and [REDACTED], the letters from [REDACTED] and the declaration from [REDACTED] to confirm the applicant resided in the United States during the requisite period. The letters from [REDACTED] and [REDACTED] do not conform to regulatory standards. The letters from [REDACTED] and [REDACTED] do not contain a notarized signature. The letters from [REDACTED] are inconsistent with the information provided on the current Form I-687. The affidavit from [REDACTED] only confirms the applicant resided in the United States in 1984 and lacks sufficient detail. In addition, the information provided on the current Form I-687 is inconsistent with the information provided on Form I-485 and on the two earlier submitted Forms I-687. The information provided on the two earlier submitted Forms I-687 conflicts with the information provided on the current Form I-687. Lastly, the information provided with the Form I-485 indicates the applicant did not reside continuously in the United States throughout the requisite period.

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 applicant's current I-687 application, other applications, and supporting documents, and given 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.