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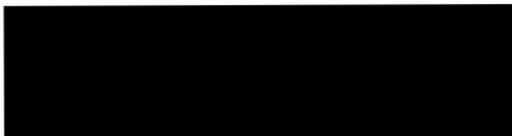
U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:

MSC 05 237 14931

Office: NEW YORK

Date:

JAN 28 2008

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.

A handwritten signature in black ink, appearing to read "D. King".

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, New York, 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 May 25, 2005. 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 determined that the extent and credibility of the evidence submitted by the applicant, which consisted of attestations from two individuals and one organization, was insufficient to satisfy the applicant's burden of proof. Therefore, the director determined that the applicant was not eligible to adjust to Temporary Resident Status pursuant to the terms of the CSS/Newman Settlement Agreements and he denied the application.

On appeal, counsel for the applicant asserts the applicant submitted substantial, probative, reliable and uncontradicted evidence sufficient to meet the preponderance of the evidence standard. Counsel submits a brief and copies of previously submitted evidence in support of the 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 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)(1).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and physical presence, in accordance with the regulation at 8 C.F.R. § 245a.2(b)(1), "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 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.* 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 for the duration of the requisite period. 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 25, 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 indicated that he resided at [REDACTED] in Elmhurst, New York from September 1980 to August 1989. At part #31 of the Form I-687 where applicants are asked to list all affiliations or associations with churches, clubs and other organizations in the United States, the applicant indicating "none." Part # 33 of this application requests the applicant to list his employment in the United States since his entry. The applicant indicated that he was self-employed as a construction worker from September 1980 until August 1989, at which time he returned to India for a period of approximately seven years.

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. 8 C.F.R. § 245a.2(d)(5). To meet his burden of proof, an applicant must provide evidence of eligibility apart from his own testimony. 8 C.F.R. § 245a.2(d)(6). The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of documentation that an applicant may submit to establish proof of continuous residence in the United States during the requisite period. This list includes: past employment records; utility bills; school records; hospital or medical records; attestations by churches, unions or other organizations; money order receipts; passport entries; birth certificates of children; bank books; letters or correspondence involving the applicant; social security card; selective service card; automobile receipts and registration; deeds, mortgages or contracts; tax receipts; and insurance policies, receipts or letters. An applicant may also submit any other relevant document pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

To establish his continuous unlawful residence in this country for the duration of the requisite period, the applicant submitted an affidavit from [REDACTED] a naturalized U.S. citizen residing in Jackson Heights, New York. [REDACTED] provided the applicant's current U.S. address and stated that he has known the applicant as a friend since he first came to the United States in September 1980. He further stated that he owns the house located at [REDACTED] in Elmhurst, New York, that he lived there from 1979 to 1994, and that the applicant shared this house with him from September 1980 to August 1989. [REDACTED] stated that during this time, the applicant he worked as a handyman at two other houses owned by [REDACTED]. The affiant provided a copy of the biographical page of his U.S. passport as proof of his identity.

[REDACTED] statement is consistent with the information provided by the applicant on part #31 of his Form I-687 with respect to his address of residence in the United States during the requisite period. However, the applicant indicated that he was self-employed as a construction worker from 1980 to 1989, while Mr. [REDACTED] stated that the applicant worked for him as a handyman responsible for maintaining properties owned by him during this period of time. This inconsistency has not been explained. Doubt cast on any aspect of the evidence may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an 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).

[REDACTED] did not submit any supporting evidence to corroborate his statement, such as evidence that he did in fact own and reside at the property in question from 1980 to 1989 or a lease agreement between himself and the applicant. Given his claim that the applicant is a friend who resided with him for a period of approximately nine years, the affidavit was lacking in detail regarding the events and circumstances of the applicant's residence in the United States.

The applicant also submitted an affidavit from [REDACTED] who indicated that he currently resides in Jamaica, New York. [REDACTED] stated that he has personally known the applicant since September 1980 and provided the applicant's current address in New York where he has resided since 2004. Here, the affiant did not indicate where or under what circumstances he met the applicant in September 1980, and did not even indicate that he met him in the United States. [REDACTED] gave no indication that he has direct personal knowledge that the applicant was in fact residing in the United States during the requisite period, and offered no details that would lend credibility to his statement that he has been a friend to the applicant for 25 years. [REDACTED] failed to provide any relevant and verifiable testimony, such as the applicant's previous address(es) of residence in this country, to corroborate the applicant's claim of residence in the United States for the requisite period. [REDACTED] statement was unaccompanied by proof of his identity or evidence that he was in the United States during the requisite period. Because of these deficiencies, this affidavit is severely lacking in probative value.

The applicant was interviewed under oath by a CIS officer in connection with the instant application on March 2, 2006. On this date, the director issued a Notice of Intent to Deny (NOID) the application, advising the applicant that the affidavits he submitted appeared to be neither credible nor amenable to

verification. The applicant was granted 30 days in which to submit additional evidence in support of his application.

In response to the NOID, the applicant submitted a letter from [REDACTED] a priest associated with the [REDACTED] in Richmond Hill, New York. [REDACTED] confirms the applicant's current address in Jamaica, New York, where he claims to have resided since 2004, and states that he has been a member of the congregation "since long time." Although [REDACTED] provided the applicant's address as of the date the letter was executed, he failed to include any of the applicant's addresses of residence during the entire period that the applicant was a member of this religious organization as required under 8 C.F.R. § 245a.2(d)(3)(v). Regardless, [REDACTED] did not indicate that the applicant was a member of this organization during the requisite period, and in fact provides no information regarding his actual dates of membership or his length of acquaintance with the applicant. Moreover, it must be noted that the applicant failed to provide any explanation as to why he did not list his membership in The Sikh Cultural Society, Inc. at part #31 of the Form I-687 application where applicants were asked to list all affiliations or associations with clubs, organizations, churches, unions, business, etc. Because the information provided does not reference the beneficiary's continuous residence in the United States between 1981 and 1988, and is inconsistent with the applicant's own testimony, this statement has no probative value.

The applicant also submitted a new affidavit from [REDACTED], which is accompanied by evidence that [REDACTED] was married in New York in 1977 and has a child born in New York in 1989. However, the content of the new affidavit was essentially identical to that previously provided by [REDACTED]. [REDACTED] simply stated that he has known the applicant since September 1980 and confirms the applicant's current address in the United States as of 2006. Therefore, like [REDACTED] previous affidavit, this statement fails to provide any substantive, verifiable testimony, such as the applicant's address(es) of residence in this country during the relevant period, to corroborate the applicant's claim of residence in the United States from prior to January 1, 1982, or to lend credibility to the affiant's claim of a long-standing relationship with the applicant.

Finally, the applicant submitted a new affidavit from [REDACTED]. [REDACTED] stated that he was introduced to the applicant by a common friend in September 1980, and that, at the time, the applicant needed a place to live and [REDACTED] was looking for a tenant. [REDACTED] stated that the applicant was "like a family member" and that they had frequent interaction while the applicant was living at his home. [REDACTED] further indicated that the applicant traveled to India on at least three occasions, in 1982, 1983, and 1987, and that he always returned to the United States within one month. He stated that he accompanied the applicant to the "immigration office in Manhattan" in 1987, where his legalization application was rejected. [REDACTED] stated that the applicant worked in the United States until "late 1989" when he returned to India. With respect to the 1987 legalization application, [REDACTED] indicated that the applicant "had several documents that clearly showed his continuous physical presence in the US during 1981 to 1988." [REDACTED] indicated that all of the applicant's documents were destroyed in 1999 when "my house got burnt." [REDACTED] stated that he can confirm that the applicant had "every kind of evidence" to support his claim of continuous residence. It is noted that [REDACTED] referred to the applicant as [REDACTED] in three places in the affidavit, but there is no evidence in the record that the applicant

has ever used this name. The affiant's reference to the applicant by two different names in the same affidavit casts doubt on the credibility of his testimony.

Furthermore, while the new affidavit from [REDACTED] was considerably lengthier than the affidavit initially provided, it offered little new verifiable information regarding the applicant's claimed period of residence in the United States. [REDACTED] generally confirmed the dates of the applicant's claimed absences from the United States. However, the new affidavit did not clarify the discrepancy noted above with respect to the applicant's employment in the United States. [REDACTED] did not offer evidence that he owns or owned the house he claims to have resided at with the applicant or offer any other evidence of his own residence at this address, which would tend to corroborate his statements. He indicated that the applicant had "every kind of evidence" to submit in support of his legalization application, but offered no further details regarding this documentation. However, [REDACTED] provided no evidence, such as insurance claims or similar documentation, to show that he lost a house or sustained property damage in a fire.

The director denied the application on July 25, 2006. In denying the application, the director concluded that the new evidence and evidence already included in the record was insufficient to establish the applicant's eligibility for temporary residence under Section 245A of the Act. The director specifically noted that the affidavits submitted appeared neither credible nor amenable to verification, and that such affidavits were uncorroborated by other evidence in the record. The director further noted that the applicant had submitted no proof of his relationship with the affiants, or evidence related to the house fire referenced by [REDACTED]

On appeal, counsel for the applicant asserts that the applicant submitted substantial, probative, reliable and un-contradicted evidence sufficient to establish by a preponderance of the evidence his eligibility for temporary resident status. Counsel submits copies of all previously-submitted affidavits in support of the appeal.

Upon review, counsel's assertions are not persuasive. 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). 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.

Here, the evidence submitted is not, as counsel asserts, "substantial, probative, reliable, and uncontradicted." Two of the three affiants, [REDACTED] and [REDACTED], make no clear claim that they had any direct, personal knowledge of the applicant's residence in the United States during the requisite period and therefore their statements have no probative value. Accordingly, the applicant's claim of continuous residence is corroborated only by the attestations of [REDACTED]. As noted above, [REDACTED] provided information regarding the applicant's employment in the United States which does not comport with the

applicant's own statements on his Form I-687, inexplicably referred to the applicant by two different names, and otherwise provided little verifiable information regarding the events and circumstances of the applicant's residence in this country during the requisite period.

Further, this applicant has provided no contemporaneous evidence of residence in the United States relating to the 1981-88 period that can be clearly associated with him, and the claim that such evidence was destroyed in a house fire that has not been documented is unpersuasive. The absence of sufficiently detailed and consistent evidence 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 inconsistencies in the record and 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.