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U.S. Citizenship
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Services

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[Redacted]

FILE: [Redacted]
MSC-06-091-15669

Office: MILWAUKEE

Date: JUN 19 2008

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, Milwaukee. The 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 December 30, 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. Specifically, the director noted that the applicant's statements at his interview were inconsistent with the information contained in his Form I-687 and other documentary evidence of record. 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.

The applicant represents himself on appeal. He maintains that he is eligible for temporary resident status, and explains that the inconsistencies of record are due to the fact that he does not speak English very well, that he did not understand the questions during his interview, and that he did not have an interpreter. In his statement offered in support of his appeal and marked as "Exhibit A", the applicant states that he lived in the United States from 1981 to 1988 and that he departed briefly for one month from September of 1986 to October of 1986. The applicant states further that he departed the United States in October of 1988 and returned to India, where he remained for ten years, and ultimately returned to the United States in April of 1998.

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 have been 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).

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)(1) 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 period, 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).

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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.2(d)(6).

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. In this case, the applicant has provided no credible, probative, and relevant evidence that he resided unlawfully in the United States for the requisite statutory period.

The AAO notes that the record before us contains evidence that the applicant attempted to gain lawful status in the United States by marriage to a United States citizen. The record contains a photocopy of a marriage license issued by Lake County, Illinois indicating that the applicant married [REDACTED] on May 30, 2001. A Petition for Alien Relative (Form I-130) was filed on behalf of the applicant on June 19, 2001. Both the applicant and [REDACTED] were interviewed on two occasions, where it was determined that neither party could provide accurate

answers to basic questions about their relationship. Consequently, the Petition for Alien Relative was deemed fraudulent and denied on September 21, 2006. *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). As a result, the AAO notes that the fraudulent marriage raises doubts as to the credibility and reliability of the applicant's evidence in support of his claim of continuous residence. 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 her 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, 591-92 (BIA 1988).

The AAO notes that during his interview with an immigration officer on September 21, 2006, the applicant was unable to provide details regarding his arrival in the United States. He claimed that he first entered in 1981, but was unable to identify the month or time of year. He stated that he flew from India to Mexico and then boarded a bus for the United States. The applicant was unable to identify the city or town in Mexico where he boarded the bus.

The applicant states on the Form I-687 that he resided on Granada Way, Madison, WI, from October of 1981 to July of 1986. In support of this statement, the applicant provided an affidavit from [REDACTED], who claimed that the applicant sublet a room from her at that address, and paid \$100 a month in cash as rent. The applicant included a copy of her Wisconsin driver's license and a document identified as a "rent receipt" dated October 1, 1981; however, the receipt is inconclusive because it is marked as covering an entire year, from October 1, 1981 to October 1, 1982. [REDACTED]'s affidavit states that she and the applicant shared the apartment until June, 1986. The AAO notes that the record contains no other documentary evidence of this arrangement, alleged to have spanned a period of five years, such as copies of a lease agreement, utility bills, or additional rent receipts. Consequently, the affidavit and rent receipt are of minimal probative value.

Furthermore, the applicant claimed on his Form I-687 that he returned to India for one month from September, 1986 to October, 1986 and then resided in India for approximately 10 years from October, 1988 to April, 1999. In contrast, the applicant stated at his interview on September 21, 2006 that he returned to India in 1989 and re-entered the United States with a B-2 visitor's visa on April 6, 1998.

In addition to [REDACTED]'s affidavit, the applicant submitted two additional affidavits for consideration. The affidavit from [REDACTED] states that she has known the applicant since 1981, and that he used to work at a nearby gas station on Park Street. The affidavit from [REDACTED] claims that the affiant has known the applicant since 1981, that they met through mutual friends, and that they have attended various social functions. The affidavits from Ms. [REDACTED] and [REDACTED] lack sufficient specificity to explain their relationship with the applicant, or where he resided during the specified period of time. Therefore, the AAO concludes that the

paucity of factual detail renders these affidavits of very limited probative value. Furthermore, the record contains a list of members of the Sikh Religious Society of Madison, WI. This list identifies the applicant as a member since 1984.

The AAO observes that the only evidence the applicant offers in support of his claimed residence and presence in the United States for the requisite period is his own statement and the affidavits of acquaintances that are deemed not credible for the reasons outlined above. Furthermore, the evidence of marriage fraud undermines the credibility of his testimony, which remains otherwise uncorroborated by probative documentary evidence. The applicant's declaration on appeal that he required the assistance of a translator during his interview does not overcome the paucity of evidence and doubt raised by the earlier fraud. The applicant stated on appeal that he would submit additional evidence in support of his claimed residence, but to date, the record contains no further evidence from the applicant.

The absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the requisite period seriously detracts from the credibility of her 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 lack of credible supporting documentation and the applicant's reliance on affidavits that have been found to have minimal probative value, it is concluded that the applicant has failed to establish by a preponderance of the evidence that she has continuously resided in an unlawful status in the United States for the requisite period, 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.