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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: New York Date: MAR 25 2008

MSC-05-231-15519

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:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

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. 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. 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 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.

On appeal, counsel for the applicant cites to the evidence the applicant previously submitted. Counsel notes that the applicant does not have a primary record because he was in unlawful status during the requisite period.

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).

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.* at 80. 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, 431 (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 meet his burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The record shows that the applicant submitted a Form I-687 Application and Supplement to Citizenship and Immigration Services (CIS) on May 19, 2005. The applicant signed the Form I-687 under penalty of perjury, certifying that the information he provided is true and correct. At part #30 of the Form I-687 application where applicants are asked to list all residences in the United States since first entry, the applicant showed his first address in the United States to be in Bronx, New York from 1981 until 1993. At part #33 of the application, the applicant showed that he was employed with [redacted] in Flushing, New York from 1983 until 1986 and [redacted] in Queens, New York, from 1987 until 1994. The applicant left blank the sections on this part of the application that request information on occupation and wage. Also, the applicant's response that he was employed with [redacted] from 1987 until 1994 is inconsistent with part #32 of the application where he indicated that he traveled to India in October 1993.

The applicant initially filed his application without any corroborating documentation of his residence in the United States during the requisite period. On November 15, 2005, the director,

National Benefits Center, issued a Notice of Intent to Deny (NOID) to the applicant. The director's NOID requested the applicant to submit documentation to establish his eligibility for Temporary Resident Status. The applicant was afforded thirty (30) days to provide this evidence. The applicant responded with the NOID with an affidavit from [redacted], a letter from [redacted] c., a letter from [redacted] and a letter from [redacted]

The affidavit from [redacted] provides that he has known the applicant since the applicant's arrival in the United States in 1981. [redacted] testifies in this affidavit, '[redacted] requested me to find a job and place to live when he first arrived in the United States of America in 1981 . . . Mr. [redacted] often visits me at my home and by the passing of time I have found him a person of good moral character . . . he has been constantly living in Untied States except for brief absences for visiting his country." While this affidavit provides some information on [redacted] relationship with the applicant, it is vague in several respects. The affidavit states that [redacted] has known the applicant since 1981, without specifying the month in 1981 when they first met. Additionally, the affidavit does not detail [redacted]s first meeting with the applicant. Finally, the affidavit fails to elaborate on the employment and housing [redacted] found for the applicant. Although not required, affidavit could have carried more weight if he had provided a phone number to verify the content of his affidavit. Since [redacted]s affidavit lacks considerable detail, it can only be afforded minimal weight as probative evidence.

The letter from [redacted], President of [redacted]. provides, in part:

> I know [redacted] as a devoted and regular visitor to our temple in New York. He has been a regular presence in the temple since 1981. I have also noticed him serving in our KAR SEVA (voluntary manual service) and LANGER (free food service). He is always found helpful in all the religious ceremonies as and [sic] when needed. I am aware that he came to USA in 1981 without any visa and has been constantly trying to attain legal status. He has been regularly living in New York Metropolitan areas except for very brief periods while he was visiting his family.

The regulation at 8 C.F.R. § 245a.2(d)(3)(v) provides the guidelines for attestations from religious organizations. These guidelines specify that such a letter should identify the applicant by name, be signed by an official, show inclusive dates of membership, state the address where the applicant resided during the membership period, include the seal or letterhead of the organization, establish how the author knows the applicant, and establish the origin of the information being attested to. It should be noted that the applicant has not provided any information on his membership with The Sikh Cultural Society on his Form I-687 application. The letter from [redacted] states that the applicant has been a regular presence in their temple in New York since 1981. However, [redacted] fails to specify the name of this temple. Furthermore, [redacted] has not made it clear if he has personal knowledge of this information or if it was provided to him by another source. [redacted]i states that he is aware the applicant

came to the United States in 1981 without a visa. Again, [redacted] fails to clarify whether he was personally made aware of the applicant's unlawful status in 1981 or if he was informed of this information on a subsequent date. Since this letter lacks considerable detail on the origin of the information being attested to, it can only be afforded minimal weight as probative evidence.

The letter from [redacted] Shift-In-Charge of [redacted], provides, "[t]his is to confirm that [redacted] worked with our establishment from April, 1981 to November, 1982 as casual worker on the basis of 8 hours a day. He was being paid $50.00 (Fifty Dollars) a week for the work done." It should be noted that the applicant failed to provide any information of his employment with [redacted] on his Form I-687 application.

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) provides the following guidelines for employer letters:

> Letters from employers should be on employer letterhead stationery if the employer has such stationary, and must include: (A) Alien's address at the time of employment; (B) Exact period of employment; (C) Periods of layoff; (D) Duties with the company; (E) Whether or not the information was taken from official company records; and (F) Where records are located and whether the Service may have access to the records. If the records are unavailable, an affidavit form-letter stating that the alien's employment records are unavailable and why such records are unavailable may be accepted in lieu of (3)(i)(E) and (3)(i)(F) of this paragraph. This affidavit form-letter shall be signed, attested to by the employer under penalty of perjury, and shall state the employer's willingness to come forward and give testimony if requested.

The letter from [redacted] does not fully satisfy the delineated guidelines. First, the letter does not provide the applicant's address at the time of his employment. Second, the letter fails to elaborate on the applicant's duties other than stating that he was a "casual worker." Third, the letter fails to explain whether the information provided was taken from official company records or the reason such records are unavailable. Finally, there is no indication that [redacted] has personal knowledge of the applicant's employment with this company. Therefore, this letter can only be afforded minimal weight as probative evidence.

The letter from [redacted], Manager, [redacted] dated September 30, 1993, provides, "[redacted] has worked with us since December, 1987 as casual worker and he was being paid $150.00 (One Hundred Fifty Dollars) a week for the job done by him during the week." The letter from [redacted] also fails to fully satisfy the delineated guidelines. First, the letter does not provide the applicant's address at the time of his employment. Second, the letter fails to elaborate on the applicant's duties other than stating that he was a "casual worker." Third, the letter fails to explain whether the information provided was taken from official company records or the reason such records are unavailable. Finally, there is no indication that [redacted] has personal knowledge of the applicant's employment with this

company. Moreover, the overall reliability and credibility of this letter is suspect because the New York State Division of Corporations records show that [redacted] was registered on July 16, 1991. It is therefore improbable that the applicant could have been employed with this company in December 1987. Because of the numerous deficiencies in this letter, it can not be afforded any weight as probative evidence.

On March 16, 2006, the director, New York, issued a NOID to the applicant. The director found that the applicant failed to submit credible documents that establish by a preponderance of the evidence the applicant's residence in the United States during the statutory period. The director noted that the affidavits the applicant submitted are not corroborated by other evidence in the record nor are they credible.

In response to the NOID, the applicant submitted his own written statement, which provides in part, "I entered the United States of America during March, 1981 without inspection at the border and since that time I have resided in United States until now except for few brief visits in and out of the country without reducing the significance of the whole period of continuous presence . . ." The applicant failed to provide with his rebuttal any additional evidence of his residence in the United States during the requisite period. Pursuant to 8 C.F.R. § 245a.2(d)(6), to meet his burden of proof, an applicant must provide evidence of eligibility apart from his own testimony.

In denying the application the director found that the applicant failed to submit any additional documentary evidence. The director noted that the applicant did not address any of the deficiencies detailed in the NOID. The director concluded that the applicant failed to meet his burden of proof in the proceeding.

On appeal, counsel for the applicant asserts that the applicant provided a letter from [redacted] which mentions that he has been attending the congregation since 1981. Counsel further asserts that two of the affidavits the applicant submitted had phone numbers. Counsel notes that CIS did not attempt to verify the affidavits. Counsel maintains that because the applicant was in unlawful status during the requisite period he has no primary record.

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. The applicant submitted documents that when viewed either individually or in the totality are at best of minimal probative value. 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)(vi)(L), the applicant may submit "any relevant document" to corroborate his residence in the United States. On appeal and in rebuttal to the second NOID, the applicant failed to provide any additional corroborating documentation of his residence in the United States. Since the applicant has failed to submit any additional evidence, he has not overcome the basis for the director's denial. The applicant's failure to provide sufficient probative evidence to establish his continuous residence

in the United States during the requisite period renders a finding that he has failed to satisfy his burden of proof, as delineated in 8 C.F.R. § 245a.2(d)(5). The applicant has not submitted sufficient evidence to establish that his claim is "probably true" pursuant to *Matter of E-M-, supra*.

In this case, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, as well as the contradictions noted in the record, seriously detract from the credibility of his 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, it is concluded that he has failed to establish by a preponderance of the evidence that he 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.