

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

41

[Redacted]

FILE: [Redacted]
MSC-05-263-11762

Office: NEW YORK

Date: **OCT 15 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:

[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. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed or rejected, 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 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 denied the application on February 21, 2007. The director determined that the applicant failed to establish, by a preponderance of the evidence, continuous unlawful residence in the United States throughout the requisite period. Specifically, the director found that the affidavits and written statements submitted by the applicant lacked credibility.

On appeal the applicant, through counsel, states that the applicant has satisfied his burden of proof through the affidavits and written statements that he submitted in support of his application.

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 applicant 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.

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 applicant has not met his burden of proof.

The record contains the following affidavits and written statements submitted by the applicant to establish his residence during the requisite period:

- An affidavit from [REDACTED] dated May 13, 2005. There is also an affidavit from [REDACTED] dated September 7, 2005. In both affidavits the affiant states that the applicant is a family friend and the affiant claims to have knowledge that the applicant has resided in the United States since May of 1981. The affiant states that the applicant visited him at his home in July of 1981. The affiant further states that he and the applicant saw each other on many occasions at a religious temple and at each others’ homes. These affidavits lack probative details such how the affiant came to meet the applicant, how the affiant dates his initial acquaintance with the applicant, or the nature and frequency of the affiant’s contact with the applicant during the requisite period. Given this lack of detail, these affidavits will be given only minimal weight as evidence of the applicant’s residence in the United States during the requisite period.
- An affidavit from [REDACTED] dated September 6, 2005. The affiant states that he has known the applicant since April of 1981. However, the applicant has stated that he first entered the United States in May of 1981. Further, the affiant does not state how he came to meet the applicant or how he dates his initial acquaintance with the applicant. In addition, the affiant fails to provide any detail regarding the nature and frequency of his contact with the applicant during the requisite period. In light of these deficiencies this affidavit has little probative value and will be given minimal weight as evidence of the applicant’s residence in the United States during the requisite period.

- Two affidavits from [REDACTED], both dated September 10, 1991. In one affidavit, the affiant claims to have personal knowledge of the applicant's residence in the United States during the requisite period. Although the dates and place of residence are consistent with information provided by the applicant on his I-687 application, the affidavit lacks details such as the circumstances under which the affiant came to know the applicant or how he dates his initial acquaintance with the applicant. In the second affidavit, the affiant claims to have personal knowledge of the applicant's departure from the United States on August 13, 1987 and his return to the United States in September of 1987. Again, the dates are consistent with the information provided by the applicant, but the affidavit is lacking in probative details. Because these affidavits lack such relevant detail, they will be afforded only minimal weight as evidence of the applicant's residence in the United States during the requisite period.
- An affidavit from [REDACTED] dated September 11, 1991. The affiant states that the applicant resided with him at [REDACTED], Flushing, NY from May 1981 until July 1985. The affiant does not explain how he came to know the applicant or how he dates his initial acquaintance with the applicant. The affiant also fails to provide any documentary evidence of the rental payment supposedly made to him by the applicant, such as rent receipts or bank records. Given this lack of detail, this affidavit will be given only minimal weight as evidence of the applicant's residence in the United States during the requisite period.
- An affidavit from [REDACTED] dated September 10, 1991. The format of this affidavit is nearly identical to the format of the affidavit from [REDACTED]. The affiant states that the applicant resided with him at [REDACTED], Queens, New York from August 1985 until December 1990. The affiant does not explain how he came to know the applicant or how he dates his initial acquaintance with the applicant. The affiant also fails to provide any documentary evidence of the rental payment supposedly made to him by the applicant, such as rent receipts or bank records. Given this lack of detail, this affidavit will be given only minimal weight as evidence of the applicant's residence in the United States during the requisite period.
- A letter from [REDACTED] on letterhead of the Ajanta India Restaurant. The letter, dated April 12, 1990, states that the applicant was employed at the Ajanta India Restaurant as a kitchen helper from August 1981 until April 1985. The letter is deficient in that it does not comply with the regulation relating to past employment records. For example, the letter does not provide the applicant's address at the time of employment and does not state whether or not the information was taken from official company records. 8 C.F.R. § 245a.2(d)(3)(i). Even absent compliance with the regulation, the letter is considered a "relevant document" under 8 C.F.R. §245a.2(d)(3)(iv)(L). *See, Matter of E-M-* 20 I&N Dec. at 81. However, due to its minimal detail, the letter has minimal weight as evidence of the applicant's residence in the United States during the requisite period.

- A letter from [REDACTED], owner of [REDACTED] Construction Company. The letter, dated January 3, 1991, states that the applicant worked as a construction laborer from August 1985 until December 1990. The letter is deficient in that it does not comply with the regulation relating to past employment records. For example, the letter does not provide the applicant's address at the time of employment and does not state whether or not the information was taken from official company records. 8 C.F.R. § 245a.2(d)(3)(i). Even absent compliance with the regulation, the letter is considered a "relevant document" under 8 C.F.R. §245a.2(d)(3)(iv)(L). See, *Matter of E-M-* 20 I&N Dec. at 81. However, due to its minimal detail, the letter has minimal weight as evidence of the applicant's residence in the United States during the requisite period.
- A letter from [REDACTED], president of the Guru Nanak Mission NY, dated April 18, 2005. The declarant states that he has known the applicant since early 1981. The affiant fails to provide details such as how or where he met the applicant, or how he dates his initial acquaintance with the applicant. Further, the affiant fails to explain the nature and frequency of his contact with the applicant during the requisite period. Given these deficiencies, this affidavit will be given only minimal weight as evidence of the applicant's residence in the United States during the requisite period.
- An undated letter on letterhead of The Sikh Center of New York, Inc. The letter is signed, but the signature is illegible. The letter states that the applicant "is a regular visitor to the Sikh Center since 1981." This letter fails to comply with the regulation for attestations by churches and other organizations in that it fails to provide inclusive dates of the applicant's membership, fails to identify the title of the individual who signed the letter, and fails to state the address where the applicant resided during the membership period. 8 C.F.R. § 245a.2(d)(3)(v). The letter therefore has minimal weight as evidence of the applicant's residence in the United States during the requisite period.
- A letter from [REDACTED], a priest with the Sikh Cultural Society, Inc. The letter, dated September 12, 2005, states that the applicant has been a member of the congregation for a "long time." The letter does not specifically state that the applicant was a member of the congregation during the requisite period, and the author of the letter does not claim to have knowledge of the applicant's residence during the requisite period. Therefore, this letter will not be given any weight as evidence of the applicant's residence in the United States during the requisite period.

Although not mentioned by the director, the record also contains documentation showing that the applicant has been convicted of a felony in the United States. Specifically, the record shows that the applicant was convicted of Attempted Assault in the Second Degree on March 2, 1995. An alien who has been convicted of a felony is not eligible for temporary resident status. Section 245A(a)(4)(B) of the Act, 8 U.S.C. § 1255a(a)(4)(B); 8 C.F.R. § 245a.2(c)(1).

In summary, the applicant has not established his eligibility for temporary resident status. 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 for the requisite period. In addition, the record shows that the applicant has been convicted of a felony in the United States. 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.