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[REDACTED]

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FILE: [REDACTED]
MSC-06-098-14399

Office: MILWAUKEE, WI Date: OCT 16 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. 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 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. 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 noted that the applicant indicated during his interview that he was absent from United States from 1982 through October of 2001. The director also noted that the applicant's testimony concerning his initial entry into the United States was unconvincing and was not supported by documentary evidence. 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 asserts that the applicant never made the statements alleged by the director and that the director never properly considered the evidence submitted. The applicant submits on appeal evidence that has been previously submitted.

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).

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) 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. See 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 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 January 6, 2006.

The applicant submitted the following attestations as evidence:

- An affidavit from _____ of the Sikh Temple of Wisconsin in which he stated that the applicant has been a member of the congregation since 1983. He also stated that the applicant attends activities at the temple regularly and takes an active part in cultural events. The affiant’s statement is inconsistent with the applicant’s statement on his Form I-687 application, at part #31 where he was asked to list all associations or affiliations with clubs, religious organizations, churches, unions, or businesses, and the applicant stated “None.” In addition, the affidavit does not conform to regulatory standards for attestations by churches at 8 C.F.R. § 245a.2(d)(3)(v). Specifically, the declaration does not state the address where the applicant resided during the alleged membership period, nor does it establish the origin of the information being attested to. Because this letter does not conform to regulatory standards, and because it conflicts with other evidence in the record, it can be afforded little weight in establishing that the applicant’s continuous unlawful residence in the United States since before January 1, 1982.

An affidavit from [REDACTED] in which she stated that she has known the applicant since late 1981. She also stated that she has known the applicant by him living in her locality, that he has been very active in the local neighborhood and community, and that he is very active in the local church. Here, the affiant fails to specify the frequency with which she saw and communicated with the applicant during the requisite period. She also fails to identify the applicant's address or place of residence during the requisite period. Although the affiant states that the applicant was very active in his neighborhood, community, and church, he indicated on his Form I-687 application at part # 31 that he had no such affiliations or associations. Because this statement is inconsistent with the applicant's statements on his Form I-687 application, doubt is cast upon the reliability and sufficiency of the statement made. 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 lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The applicant has failed to submit any objective evidence to explain or justify the inconsistency.

In denying the application, the director noted that the applicant had testified to being absent from the United States from 1982 to May of 1988. The director also noted that the applicant had failed to submit sufficient evidence to support his claim of being present in the United States since before January 1, 1982.

On appeal, counsel reasserts the applicant's claim of eligibility for temporary resident status and also states that the applicant never claimed to be absent from the United States from 1982 to 1988. Counsel resubmits copies of the affidavits from [REDACTED] and [REDACTED] as evidence.

In the instant case, the applicant has failed to provide sufficient, credible and probative evidence to establish his continuous unlawful residence in the United States since prior to January 1, 1982. Although counsel asserts that the applicant never made the statements alleged by the director regarding his absence from the United States, he has failed to submit sufficient evidence that demonstrates the applicant's residence and physical presence during the period in question. The applicant has failed to overcome the grounds for the director's denial. It is noted by the AAO that the affidavits are inconsistent with statements made by the applicant; the affidavit from [REDACTED] fails to conform to regulatory standards, and the affidavit from [REDACTED] is lacking in detail.

It is noted by the AAO that the applicant claims to have entered the United States in 1981; however, the applicant indicated on his Form G-325, Biographic Information, which he submitted in conjunction with a Form I-485, Application to Adjust Status, that he resided at [REDACTED] in Fateh, Punjab, India from December of 1965 to June of 1997. It is also noted that the applicant's spouse indicated on the Form I-130, Petition for Alien Relative, that the applicant entered the United States on June 12, 1997. The statements are inconsistent with and contradict the statements made by the applicant. 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 the 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 lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The applicant has failed to submit any objective evidence to explain or justify the inconsistencies.

The absence of sufficiently detailed 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 lack of evidence to substantiate his claim, it is concluded that the applicant has failed to establish continuous residence in an unlawful status in the United States for the requisite period 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.