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

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] OFFICE: MILWAUKEE Date: OCT 22 2008

MSC 06 026 15248

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, Milwaukee, and is now before the Administrative Appeals Office 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 specifically noted the lack of school records despite the fact that the applicant was of school age at the time of his alleged entry into the United States. 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 asserts that the applicant did not attend school upon his arrival to the United States and states that the two affidavits submitted in support of the applicant's claim are sufficient to meet his burden of proof.

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 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 presence in accordance with the regulation at 8 C.F.R. § 245a.2(b), "until the date of filing" shall mean until the date the alien 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.* 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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he resided in the United States during the requisite time period. Here, the applicant has failed to meet this burden.

The applicant did not provide supporting evidence at the time he filed the Form I-687. Accordingly, the director issued a notice of intent to deny (NOID) dated November 22, 2005, notifying the applicant that he had not submitted corroborating documentation in support of his claimed residence in the United States during the statutory period.

In response to the NOID, the applicant provided an affidavit executed on December 7, 2005, which he wrote himself. The applicant claimed that he first entered the United States in March 1980. He claimed that he lived with his parents in Milwaukee, Wisconsin until 1987 and that he resided in the United States by himself thereafter, as his parents went back to India. He claimed that he has been a member of the Sikh Religious Society and Sikh Religious Temple since the 1980s and further stated that he has attended the Sikh Gurdwara weekly for Sunday prayer services. It is noted, however, that going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The only documentation the applicant submitted to corroborate his statements included two affidavits.

The first affidavit, executed on December 3, 2005, was from [redacted] and the second affidavit, executed on December 5, 2005, was from [redacted]. The affidavits are similar in their form and in their content, with the most significant distinction being that [redacted] claimed that he had known the applicant since 1981, while [redacted] claimed that she had known the applicant since 1980. Both affiants claimed that the applicant "has been working in this neighborhood since he was a teenager back in [the] 1980's." Both affiants also claimed that they consider the applicant a part of their

respective families and both also claimed that they often see the applicant going to the Sikh temple for Sunday prayers. Ms. [redacted] further added that the applicant used to help her at her garage store "when he was young and out of [a] job for a while." It is noted that despite the fact that both affiants claim that the applicant was close enough to be considered a member of their respective families, neither individual provided any specific information regarding the events and/or circumstances of the applicant's life during the applicant's alleged residence in the United States during the statutory time period. Their claim that the applicant has attended prayer services at a Sikh temple is inconsistent with the applicant's Form I-687 application, where the applicant was given the opportunity to disclose his memberships and affiliations with religious organizations at No. 31 of the application. It is noted that the applicant provided the word "none," thereby indicating that he was neither a member of nor was affiliated with any organizations, religious or otherwise. This information also conflicts with the statements made by the applicant himself in his own affidavit, where he claimed to be a member of the Sikh Religious Society. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). In the present matter, the inconsistency is neither resolved nor even acknowledged by the applicant or his counsel.

That being said, the applicant's response to the NOID also included a letter dated December 1, 2005 from the president of the Sikh Temple of Wisconsin, Inc., who claimed that the applicant has been a member of the Sikh Religious Society and further stated that the applicant attends weekly prayers and other religious ceremonies at the temple. However, the letter falls short of the regulatory requirements enumerated at 8 C.F.R. § 245a.2(d)(3)(v), which applies to attestations from churches, unions, and other organizations. Specifically, the letter fails to state the applicant's specific dates of membership, the applicant's address at the time of his alleged membership, and does not establish how the author of the letter knows the applicant or the origin of the information provided by this individual. As a result of these considerable deficiencies, this document will be afforded no weight as evidence of the applicant's residence in the United States during the statutory period.

On appeal, counsel disputes the director's conclusion, asserting that the applicant has provided evidence of his residence and of his employment in the United States during the statutory period. However, as noted above, the documentation provided is severely lacking in relevant information. With regard to counsel's claim that one of the affidavits submitted, i.e., the affidavit of [redacted], attested to the applicant's employment, this statement is not persuasive, as the referenced affidavit fails to meet the requirements of 8 C.F.R. § 245a.2(d)(3)(i), which states that a letter of employment should contain the applicant's address at the time of employment, the specific periods of employment, the applicant's job duties, and should also indicate whether official company records served as the source of the information provided. Ms. [redacted] affidavit was extremely broad, indicating only that the applicant assisted her with a garage store. The affiant did not provide the applicant's address at the time of employment, his job duties, or his specific dates of employment, aside from stating that she employed him in the 1980s when he was out of work. Ms [redacted] affidavit was deficient and will also be afforded only minimal weight as evidence of the applicant's residence in the United States during the statutory period.

Lastly, while the AAO acknowledges that the applicant's claimed residence at [redacted] occurred during two separate time periods and that the discrepancy perceived by the director may not exist, the record remains severely lacking in credible and verifiable affidavits that would support the applicant's claim.

The absence of sufficiently detailed and credible supporting documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of this claim. As previously stated, 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). Given the applicant's contradictory statements and his reliance upon documents with minimal or no 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-*, 20 I&N Dec. 77. 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.