U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: LOS ANGELES Date: SEP 05 2008

MSC-04-276-10265

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 District Director, Los Angeles. 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 August 22, 2007 because he found that the applicant failed to establish eligibility for Temporary Resident Status pursuant to the terms of the CSS/Newman settlement agreements. Specifically, the director cited a number of inconsistencies in the record and found that these cast doubt on the applicant's claim to have resided in the United States continuously throughout the requisite period. For example, the director found that a Form I-130 Petition for Alien Relative filed on behalf of the applicant in 2001 had listed the applicant's date of arrival in the United States as 1985. A Form I-130 petition filed on the applicant's behalf in 2004 indicated that the applicant arrived in the United States in 1988. The director also noted that the information provided by the applicant in his Form I-687 application regarding an absence from the United States during the requisite period conflicted with information contained in a witness affidavit.

On appeal the applicant, through counsel, states that he has submitted sufficient evidence to establish his eligibility for temporary resident status. Counsel also states that the director failed to consider evidence submitted by the applicant in support of his application, as the director did not specifically reference this evidence in his decision. In addition, counsel argues that the Notice of Decision dated August 22, 2007 did not comply with the requirements of the CSS/Newman Settlement Agreements because it failed to provide the applicant with thirty days to respond to the deficiencies identified in his application.

The AAO has reviewed all of the evidence and has made a de novo decision based on the record and the AAO's assessment of the credibility, relevance and probative value of the evidence.[1]

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

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[1] The AAO maintains plenary power to review each appeal on a de novo basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's de novo authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

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) 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 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).

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 record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on July 2, 2004. The director issued a Notice of Intent to Deny (NOID) the application on September 28, 2005. In the NOID, the director stated that the applicant was "statutorily ineligible because you stated under oath that you applied for SAW Agriculture Program in November 1988." The director also noted that the applicant left the United States in 1989 and returned to the United States in 1992 under the assumed name [redacted]' The director denied the application on August 22, 2007. As noted above, the director based the denial on discrepancies in the record regarding the applicant's initial entry into the United States and his absences from the United States during the requisite period. The final

decision did not mention either the applicant's previously filed SAW application or his 1992 entry.

On appeal, counsel argues that the denial issued on August 22, 2007 violated the CSS/Newman Settlement Agreements. Specifically, counsel argues that the deficiencies stated in the denial had not been stated in the NOID. Therefore, counsel argues, the NOID failed to explain the perceived deficiencies in the application and failed to give the applicant thirty days to submit additional evidence in response to those perceived deficiencies, as required by the CSS/Newman Settlement Agreements.

Under the CSS/Newman Settlement Agreements, the director is required to issue a NOID before denying an application for class membership. Counsel correctly states that, according to the CSS/Newman Settlement Agreements, a NOID issued under such circumstances must explain the perceived deficiencies in the application and must provide the applicant with thirty days to submit additional evidence. However, in this case, the director did not deny the application for class membership. The director denied the application on the merits. As a result, the requirements in the CSS/Newman Settlement agreements relating to denials of applications for class membership are not applicable to this case.

Thus, the only 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.

In response to the NOID, the applicant submitted a number of documents including affidavits, a copy of an airline ticket, a copy of an expired passport, copies of several envelopes allegedly sent to or by the applicant, retail receipts, letters, tax documents and copies of photographs. Among the documents submitted was an affidavit from [redacted], dated October 31, 2005. The affiant states that the applicant is a childhood friend and that he and the applicant lived in the same village in India. The affiant states that he has personal knowledge that the applicant departed India for Mexico in August of 1981. The affiant also states that the applicant had informed him that he intended to enter the United States from Mexico. The affiant himself entered the United States in December of 1984. Upon entering the United States, the affiant claims that he stayed with the applicant at a Sikh Temple located at [redacted] in El Centro, California. The affiant states that he was employed at the temple as a religious worker from December 1984 until November 1988, and that he resided at the temple until November 1988. The affiant also states that the applicant resided at the Sikh temple until May 1985.

The information provided by [redacted] in his October 31, 2005 affidavit conflicts with information in earlier statements from [redacted]. Specifically, the record contains a letter dated February 15, 1988 which is signed by [redacted] and which states that the applicant resided at [redacted] from 1981 until 1988. The record also contains an affidavit from [redacted] dated June 10, 2000 in which he states that "the applicant has lived with me since 1986." These are material inconsistencies which detract from

[redacted]s credibility regarding his knowledge of the applicant's residence in the United States during the requisite period. In addition, although [redacted] stated on his October 31, 2005 affidavit that the applicant is his "childhood friend," the applicant indicated on a Form I-690 Application for Waiver of Grounds of Inadmissibility filed in May of 2007 that [redacted] is his brother. This is a material inconsistency which calls into question the nature of Mr. [redacted]s relationship with the applicant. Given these material inconsistencies, the affidavits submitted by [redacted] will be given minimal weight as evidence of the applicant's residence in the United States during the requisite period.

In response to the NOID, the applicant also submitted an affidavit from dated October 31, 2005. The affiant states that he met the applicant in the summer of 1982 in El Centro, California. The affiant states that, although he moved to Maryland in 2003 and to Nevada in 2005, he continues to keep in touch with the applicant through telephone calls. The information provided by [redacted] in his October 31, 2005 affidavits conflicts with information provided by [redacted] in earlier affidavits. Specifically, the record contains an affidavit from [redacted] dated July 22, 2003 in which he states that he is the apartment manager of [redacted] in Reno, Nevada where the applicant and his spouse resided for approximately one and a half years. The record also contains an affidavit from dated November 24, 2004 in which he provides more specific information, stating that he was the apartment manager at [redacted] until August 2003, and that the applicant and his spouse had resided at [redacted] since December 2001. In neither of these earlier affidavits does [redacted] mention having met the applicant in California in 1982. Also, these earlier affidavits conflict with Mr. [redacted] statement in his October 31, 2005 affidavit that he moved to Reno in August of 2005. These are material inconsistencies which detract from the credibility of the affiant's statements and call into question his knowledge of the applicant's residence in the United States during the requisite period. Given these material inconsistencies, the affidavit of [redacted]n will be given little weight as evidence of the applicant's residence in the United States during the requisite period.

In addition to the inconsistencies noted above, the record also contains conflicting evidence regarding the applicant's absences from the United States. The applicant claimed on his Form I-687 application and in his interview with an immigration officer that his first absence from the United States was from May 1987 to June 1987 when he went to Canada. However, in a "Legalization Front-Desking Questionnaire" completed and signed by the applicant on January 30, 2001, he stated "I was out of the country for 30 days during 1981 to 1985." In a written statement by the applicant dated January 27, 2001, the applicant stated "I was out of the country for one month in 1985." The record also contains an affidavit from [redacted] dated February 1, 2001 in which the affiant states that the applicant "was out of the country for one month in 1985." These are material inconsistencies which detract from the credibility of the applicant's claim.

The director also noted that, in a Form I-130 Petition for Alien Relative filed on behalf of the applicant in 2004, the applicant's date of arrival is listed as 1985. On appeal, counsel states that this was a typographical error made by the individual who prepared the application. Counsel

further states that the applicant's mother, the petitioner in that case, is illiterate and that she signed the form without discovering the mistake. However, in signing the Form I-130 petition, the applicant's mother certified that the information in the petition was true and correct. In addition, the record contains a Form G-639 Freedom of Information Act (FOIA) Request signed by the applicant on October 13, 2000. At part #5 of the FOIA request, which asks for the date of entry, the applicant wrote "1985 or 1986." This is a material inconsistency which detracts from the credibility of the applicant's claim and tends to indicate that he did not reside in the United States throughout the requisite period.

The applicant also submitted the following written statements in support of his application:

- An affidavit from [redacted] dated June 29, 2004. The affiant states that he has known the applicant since December 1981 and that he used to live with the applicant at [redacted] in El Centro, California. The affiant also states that the applicant was in Canada from May 14, 1988 until June 13, 1988. As noted by the director, this conflicts with the information provided by the applicant on his Form I-687 application. Specifically, the applicant stated in his Form I-687 application that he was absent from the United States from May 1987 to June 1987, not 1988. On appeal, counsel states that the incorrect date on the affidavit is the result of a typographical error. The applicant has submitted a statement purportedly signed by [redacted], the Notary Public that notarized [redacted] affidavit. [redacted] states that the affidavit contained a typographical error and that the dates should have read May 14, 1987 to June 13, 1987. The applicant also submitted a second affidavit from [redacted], dated September 19, 2007. This affidavit contains essentially the same information as the earlier affidavit, except that the affiant now states that the applicant was in Canada from May 14, 1987 until June 13, 1987. Typographical errors aside, the affidavit from [redacted] is deficient in that it lacks probative details such as how the affiant came to meet the applicant, how he dates his initial acquaintance with the applicant, and the nature and frequency of his contact with the applicant. Given these deficiencies, the affidavit will be given little weight as evidence of the applicant's residence in the United States during the requisite period.

- A notarized "CSS/LULAC Legalization and LIFE Act Adjustment Form to Gather Information for Third Party Declarations" signed by [redacted] on September 28, 2005. The declarant states that he met the applicant in 1977. The declarant further states that he was residing in Canada throughout the requisite period and acknowledges that he has never resided in the United States. The declarant bases his knowledge of the applicant's residence in the United States on the fact that the applicant allegedly called him in December of 1981 and informed the declarant that he had arrived in the United States. The declarant also states that he would speak with the applicant by phone on occasion and that the applicant visited him in Canada in May of 1987. This statement lacks probative details that would establish the declarant's personal knowledge of the applicant's residence in the United States. For example, the declarant does not provide details such as the applicant's place of residence or place of employment during the

requisite period. The lack of detail is significant, considering that the affiant claims to have a friendship with the applicant spanning more than thirty years. Due to its lack of probative detail, this document can only be afforded limited weight as corroborating evidence of the applicant's residence during the requisite period.

- A notarized "CSS/LULAC Legalization and LIFE Act Adjustment Form to Gather Information for Third Party Declarations" signed by [redacted]. The declarant states that she first met the applicant in 1979 in India. The declarant states that she has resided in Canada since 1984 and resided in India prior to that. As she has not resided in the United States, it does not appear that the declarant has personal knowledge of the applicant's residence in the United States during the requisite period. Instead, in response to the question "Between 1982 and May 1988 how do you know the applicant was living in the US" the declarant states "He used to call my mother in law and family. We used to call each other once a while like on Indian Holidays." Because the declarant fails to provide details that demonstrate a personal knowledge of the applicant's residence in the United States, this document will be given only minimal weight as evidence of the applicant's residence in the United States during the requisite period.

The record also contains affidavits from [redacted] and [redacted] both dated June 12, 2000. The affidavits contain almost identical language. Each affiant claims to know the applicant and states that the applicant "worked as a seasonal agricultural worker during 1986 onwards in the grape fields." Neither [redacted] nor [redacted] claims to have personal knowledge of the applicant's residence in the United States. Further, neither affiant explains how they came to meet the applicant, how they date their initial acquaintance with the applicant or the nature and frequency of their applicant during the requisite period. In addition, the record contains an affidavit from [redacted] dated February 1, 2001. In this later affidavit, [redacted] claims that the applicant "worked as a seasonal agricultural worker from 1981 to 1986 onwards in the grape fields." The affiant also claims that the applicant was absent from the United States in 1985 which, as noted above, is inconsistent with the information provided by the applicant. These are material inconsistencies which detract from the credibility of [redacted] affidavits. Given these deficiencies, these affidavits will be given minimal weight as evidence of the applicant's residence in the United States during the requisite period.

The applicant also submitted a copy of an Indian passport which appears to have been issued to the applicant on January 3, 1978. The passport contains a visa stamp for the Federal Republic of Germany which was valid from March 25, 1981 until August 24, 1981. There is also a stamp on the visa which bears the date May 21, 1981. The passport also contains a visa stamp for Mexico dated May 25, 1981. However, there are no legible stamps in the passport showing that the applicant actually entered Mexico. The record also contains a copy of an airline ticket issued by Lufthansa. The ticket indicates that the applicant was scheduled to travel from Delhi to Frankfurt on August 13, 1981 and from Frankfurt to Mexico City on August 14, 1981. Counsel states that the copy of the airline ticket is sufficient to show that the applicant entered the United States prior to January 1, 1982. That is not the case. There is nothing in the record to indicate that the applicant actually traveled to Mexico, such as an admission stamp in the applicant's

passport. Nor has the applicant provided any evidence of what would have been a four month stay in Mexico prior to entering the United States. The applicant has also failed to show any evidence of his entry into the United States. Therefore, these documents are insufficient to establish the applicant's entry into the United States prior to January 1, 1982.

The applicant also submitted copies of envelopes purportedly sent or received by the applicant during the requisite period. These envelopes bear postmarks with the following dates: March 7, 1982; October 14, 1982; April 21, 1983; October 12, 1983; June 5, 1984; June 25, 1984; February 1, 1985; and June 23, 1988. There is also a copy of an envelope bearing a postmark from 1985, although the precise date of the postmark is not clear.

These envelopes are insufficient to establish that the applicant resided in the United States during the requisite period in that they only relate to a few isolated dates within the requisite period. In addition, the authenticity of at least two of these envelopes—the one with a postmark dated October 14, 1982 and the one with a postmark dated February 1, 1985—is questionable. Specifically, it is noted that there are envelopes readily available for purchase on the internet that bear the same stamps, postmarks and artwork as those submitted by the applicant are readily available for purchase on the internet.[2] Given these deficiencies, these envelopes will be given only minimal weight as evidence of the applicant's residence in the United States during the requisite period.

The applicant also submitted a copy of an Application for Hiring Immigration Services of Shivji Enterprises, Inc. This document was purportedly signed and dated by the applicant on February 16, 1988. The applicant claims that Shivji Enterprises prepared the Form I-687 application which he attempted to file in February 1988. The record also contains a copy of the Form I-687 application which the applicant purportedly attempted to file. The information provided on the Form I-687 application from 1988 conflicts with the information provided by the applicant on the instant Form I-687 application. Specifically, on the Form I-687 application from 1988, the applicant listed his address as [redacted] in Bakersfield, CA from May 1985 until **September 1985.** However, on the instant Form I-687 application, the applicant listed his address as [redacted], Bakersfield, CA for the period from May 1985 until October 1985. This is a material inconsistency which detracts from the credibility of the applicant's claims.

The record also contains transcripts of the applicant's federal tax returns for 1982, 1983, 1984, 1986, 1987 and 1988. These transcripts were requested by the applicant from the Internal

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[2] As of the date that this decision was written, an envelope with a stamp of the Old Post Office in St. Louis, MO and a postmark dated October 14, 1982 is available at http://cgi.ebay.com/UX97-13c-OLD-ST-LOUIS-POST-OFFICE-PC-FDC-R-R COLORANO_W0QQitemZ190242396451QQihZ009QQcategoryZ687 QQcmdZViewItemQQ_trks id Zp1742.m153.l1262. An envelope with the Railway Mail – D Booklet picture and a postmark dated February 1, 1985 is available at http://cgi.ebay.com/FLEETWOOD-FIRST-DAY-COVER-RAILWAY-MAIL-D-BOOKLET_W0QQitemZ200080086308QQihZ010QQcategoryZ687QQrdZ1QQssPageNameZWD1VQQcmdZViewItemQQ_trksidZp1638Q2em118Q2el1247. These are identical to the envelopes submitted by the applicant.

Revenue Service on September 21, 2005. These transcripts show that the applicant had business income of $382 in 1982, $383 in 1983, $398 in 1984, $395 in 1986, $390 in 1987 and $388 in 1988. These amounts do not necessarily reflect continuous residence in the United States. Therefore, these documents will be given only minimal weight as evidence of the applicant's residence in the United States during the requisite period.

The applicant also submitted a photocopy of a letter from of the North American Business and Employment Center. The letter is dated January 10, 1984 and it is addressed to the applicant. The letter states that the applicant arrived in the United States in November of 1981. This conflicts with information provided by the applicant in his testimony before an immigration officer where he stated that he entered the United States in December of 1981. The record also contains a letter from [redacted]. The letter states that the applicant worked for [redacted] from June 1985 until September 1985 performing farm labor work. Included with the letter is a payroll summary bearing the applicant's name and listing the days and hours of his work. Although the letter is some evidence that the applicant was working in the United States for three months in 1985, it is insufficient to establish that the applicant resided in the United States throughout the requisite period.

The record also contains a retail receipt from [redacted] dated April 25, 1984. However, this receipt does not bear the applicant's name or address and therefore has no weight as evidence of the applicant's residence in the United States during the requisite period. In addition, the record contains copies of photographs of the applicant allegedly taken in the United States during the requisite period. These photographs do not have sufficient identifying markers to establish either the date or the place that they were taken. As a result, these photographs have no weight as evidence of the applicant's residence in the United States during the requisite period.

The record also contains a number of documents submitted by the applicant which fall outside the requisite period. These include school records, witness affidavits and federal tax returns. As these documents are outside the requisite period they have no probative value with respect to the applicant's residence in the United States during the requisite period.

Finally, the record reflects that on December 7, 1996, the applicant was arrested by the Oxnard Police Department and subsequently charged with *petty theft* in violation of 484(a) of the California Penal Code. On December 20, 1996, the applicant was convicted of this misdemeanor offense. (Docket No. [redacted]). This single misdemeanor conviction does not render the applicant ineligible pursuant to 8 C.F.R. § 245a.11(d)(1) and 8 C.F.R. § 245a.18(a).

In summary, the applicant has not provided sufficient evidence in support of his claim of residence in the United States relating to the entire requisite period. The absence of sufficiently detailed supporting 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. As detailed above, there are a number of material inconsistencies in the record in applications previously

submitted by or on behalf of the applicant as well as in affidavits and written statements made by witnesses. Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). Given the contradictory information in the record and the applicant's reliance upon documents with little or no probative value, 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.