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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

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FILE: [redacted] Office: NEWARK Date: AUG 2 1 2009

MSC 06 096 13429

IN RE: Applicant: [redacted]

APPLICATION: Application for Temporary Resident Status under 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.

John F. Grissom
Acting 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) on 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) on February 17, 2004 (CSS/Newman Settlement Agreements), was denied by the director in Newark, New Jersey. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The director denied the application on the ground that the applicant failed to establish that he resided continuously in the United States in an unlawful status from before January 1, 1982 through the date of attempted filing during the original one-year application period for legalization that ended on May 4, 1988.

On appeal counsel asserts that the director did not give proper weight to the affidavits and related evidence submitted by the applicant.

An applicant for temporary resident status under section 245A of the Immigration and Nationality Act (the Act) must establish his or her entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status from before January 1, 1982 through the date the application is filed. *See* section 245A(a)(2) of the Act, 8 U.S.C. § 1255a(a)(2). The applicant must also establish his or her continuous physical presence in the United States since November 6, 1986. *See* 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. *See* 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 the regulation at 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 from May 5, 1987 to May 4, 1988. *See* CSS Settlement Agreement, paragraph 11 at page 6; Newman Settlement Agreement, paragraph 11 at page 10.

An applicant for temporary resident status has the burden to establish by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, 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. *See* 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.* 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 has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (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.

The regulations provide an illustrative list of documents – which includes affidavits and "any other relevant document" – that an applicant may submit as evidence of continuous residence in the United States during the requisite period under section 245A of the Act. *See* 8 C.F.R. § 245a.2(d0)(3)(vi)(L).

The applicant, a native of India who claims to have lived in the United States since May 1981, filed his application for temporary resident status under section 245A of the Act (Form I-687), together with a Form I-687 Supplement, CSS/Newman (LULAC) Class Membership Worksheet, on January 4, 2006. As evidence of his residence in the United States during the 1980s the applicant submitted a series of affidavits and letters from residents of New York and New Jersey, all dated in November or December 2005. They included the following:

- A letter from [redacted], president of The Sikh Cultural Society, Inc. in Richmond Hill, New York, stating that the applicant had been "a regular member or our Congregation since 1981" and participated in various activities.

- A notarized letter from [redacted], on the letterhead of G & A Service Station on Jackson Avenue in Long Island City, New York, stating that he used to operate a gas station at that address and employed the applicant there from 1982 to 1984.

- An affidavit from [redacted] president of Sawan Construction Corporation, stating that he employed the applicant at his company, previously called JRG Construction Company, as a "helper" from March 1985 to December 1988 at $300/week, and as a painter from February 1989 to November 1992 at $400/week.

- Affidavits from [redacted], and [redacted], all of whom claim to have known the applicant in the United States since 1981.

On June 1, 2007 the director issued a Notice of Intent to Deny (NOID), indicating that the documentation of record was insufficient to establish the applicant's continuous unlawful residence in the United States during the years 1981 to 1988. The applicant was granted 30 days to submit additional evidence.

No response was received during the next 30 days, whereupon the director issued a decision on July 2, 2007, denying the application. The director determined that the documentary evidence submitted by the applicant failed to establish his continuous residence in the United States during the requisite period to qualify for temporary resident status under the Act.

On appeal counsel asserts that the director erred by not giving proper consideration and due weight to the affidavits and related evidence submitted by the applicant.

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).

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he resided continuously in the United States in an unlawful status from before January 1, 1982 through the date he attempted to file a Form I-687 during the original one-year application period for legalization that ended on May 4, 1988. The AAO determines that he has not.

The applicant has no contemporary documentation from the 1980s demonstrating that he resided in the United States during the years 1981-1988. For someone claiming to have lived and worked in this country continuously since May 1981, it is noteworthy that he is unable to produce a solitary document dating from that decade.

The affidavits in 2005 from [redacted], and [redacted] have minimalist formats with little personal input by the affiants. Considering how long each of the affiants claims to have known the applicant, it is remarkable how little information they provide. None of the affidavits provides any details about the applicant's life in the United States, such as where he worked during the 1980s, or the nature and extent of the applicant's interaction with the affiants over the years. Two of the affiants make no mention of where the applicant lived during the 1980s, and the other two make only brief reference to an address on [redacted] in Flushing, New York, without giving any dates. Nor are the affidavits accompanied by any documentary evidence – such as photographs, letters, and the like – of the applicant's personal relationship with the affiants in the United States during the 1980s. In view of these substantive shortcomings, the AAO finds that the affidavits have little probative value. They are not

persuasive evidence of the applicant's continuous unlawful residence in the United States during the years 1981-1988.

With regard to the letter from [redacted] of the Sikh Cultural Society, the regulation at 8 C.F.R. § 245a.4(b)(iv)(E) provides that attestations by churches, unions, and other organizations as to the applicant's residence must (1) identify the applicant by name; (2) be signed by an official whose title is shown; (3) show inclusive dates of membership; (4) state the address where the applicant resided during the membership period; (5) include the seal of the church impressed on the letter or the letterhead of the church if it has letterhead stationery; (6) establish how the church official knows the applicant; and (7) establish the origin of the information about the applicant.

[redacted] letter does not meet all the above criteria. In particular, it does not state where the applicant lived during all of his membership period, especially during the 1980s; does not establish how [redacted] knows the applicant, such as the date and circumstances of their meeting and the extent of their interaction over the years; and does not establish the origin of Mr. [redacted] information about the applicant's membership since 1981, such as whether it comes from the Cultural Society's records or is based on the hearsay of others. Accordingly, the letter from [redacted] has little probative value as evidence of the applicant's continuous unlawful residence in the United States during the years 1981-1988.

As for the notarized letter and affidavit from [redacted] and who claim to have employed the applicant during the 1980s, the regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment must (1) provide the applicant's address at the time of employment; (2) identify the exact period of employment; (3) show periods of layoff; (4) state the applicant's duties; (5) declare whether the information was taken from company records; and (6) identify the location of such company records and state whether such records are accessible, or in the alternative state the reason why such records are unavailable.

The letter and affidavit in the record do not meet all of these criteria. Neither provides the applicant's address(es) at the time of his employment during the 1980s. [redacted] does not state the applicant's duties or identify the exact period of employment, and [redacted] is also vague about the applicant's duties during the years 1985 to 1988, indicating only that he was a "helper" at the construction company. Neither [redacted] nor [redacted] indicates whether his information about the applicant was taken from company records and whether such records are available for review. Due to the infirmities discussed above, the notarized letter from and the affidavit from relating to the applicant's employment have little probative value as evidence of the applicant's continuous residence in the United States during the years 1981-1988.

Based on the foregoing analysis of the evidence, the AAO determines that the applicant has failed to establish that he resided continuously in the United States in an unlawful status from

before January 1, 1982 through the date he attempted to file a Form I-687 during the original one-year application period for legalization that ended on May 4, 1988. Accordingly, the applicant is ineligible for temporary resident status under section 245A of the Act.

The appeal will be dismissed, and the application denied.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.