U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Room 3000
Washington, DC 20529-2090

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

L1

FILE: [redacted] Office: SAN FRANCISCO Date: FEB 06 2009

MSC-05-234-10550

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.

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) 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, San Francisco. 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 (together comprising the I-687 Application). The director denied the application, finding that the applicant had failed to meet his burden of proving by a preponderance of the evidence that he entered the United States before January 1, 1982 and had resided continuously in the United States in an unlawful status throughout the requisite period. Specifically, the director noted that the applicant submitted affidavits that are neither verifiable nor credible to support his claim of continuous unlawful residence in the United States since December 1981. The director also noted in his decision that the applicant had attempted to file his application at an immigration office on Sansome Street in January 1988, which was not a qualified designated entity (QDE) during the original legalization period. Based on the affidavits submitted and the applicant's testimony, the director concluded that the applicant did not file or attempt to file the application for temporary resident status between May 5, 1987 and May 4, 1988. Nor did he enter the United States before January 1, 1982 and reside in the United States during the requisite period.

On appeal, counsel for the applicant submits a brief in which she asserts that the applicant has submitted sufficient credible evidence to establish his eligibility for temporary resident status and states that the application should not be denied solely because the applicant only submitted affidavits. In her brief, counsel contends that whether or not the immigration office on Sansome Street was a QDE, that does not change the fact that the applicant attempted to file the application and was turned away.

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)(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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.2(d)(6).

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, "[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 or petition.

The sole issue here is whether the applicant has furnished sufficient credible evidence to establish his continuous unlawful residence in the United States since before January 1, 1982 through the date he filed or attempted to file the application for temporary resident status.

As stated above, the director concluded that the applicant did not file or attempt to file the application during the original legalization period, and thus is not a class member. Upon a *de novo* review, the director's conclusion that the applicant is not a class member is withdrawn. The AAO determines that it is possible that the applicant went to [redacted] in San Francisco, California to file his application in January 1988 and was turned away. Additionally, the director adjudicated the Form I-687 application, thereby treating the applicant as a class member.

Nevertheless, membership in a class by itself does not guarantee the applicant's eligibility for temporary resident status pursuant to Section 245A of the Act. The applicant, as noted above, must show by a preponderance of the evidence that he entered the United States before January 1, 1982 and resided continuously in an unlawful status in the United States from that date until he filed or attempted to file the application for temporary resident status.

The record contains numerous documents such as a photocopy of the applicant's driver's license issued in California on August 30, 1989; his Social Security Statement showing earnings from 1990; his employment authorization document valid from April 12, 1990 to November 7, 1992; a money order receipt; various bank statements; and proof of individual tax filings from 1990 to 2000. These documents, however, will not be considered in determining the applicant's eligibility for the benefit sought since they do not relate to the requisite period.

During the interview and in his personal declaration, the applicant stated that he has resided in the United States continuously since he first entered the United States in December 1981. To support his claim of continuous residence in the United States since 1981, the applicant submitted a photocopy of a Sears card, photocopies of three affidavits submitted in 1990, an employment letter, five affidavits prepared in 2001, and a letter from [redacted] a Sikh center in the Bay area, California.

As stated above, the application of the preponderance of the evidence standard may require the examination of each piece of relevant evidence and a determination as to whether such evidence, either by itself or when viewed within the totality of the evidence, establishes that something to be proved is probably true. *Matter of E-M-, supra* at 80. Other than the applicant's name and a date August 15, 1984, the Sears card has no relevant information showing when and where the card was issued, how the applicant obtained it, or whether the card belongs to the applicant. The card by itself is not evidence of the applicant's presence in the United States in 1984 or his residence throughout the requisite period.

With respect to the affidavits submitted, quality, not quantity, of evidence is the decisive factor in the search for the truth. The contents of the affidavits must be assessed and the quality of the evidence determined. *Matter of E-M-, supra.* Affidavits containing specific, personal knowledge of the applicant's whereabouts during the time period in question have greater weight than fill-in-the blank affidavits providing generic information. Here, all three affidavits submitted in 1990 appear on fill-in-the-blank affidavits. [redacted], the author of all three affidavits attests to the applicant's continuous presence in the United States since December 1, 1981 and the applicant's absence from the United States for one month in 1987 but provides no detailed information as to how he met the applicant, how he dates his acquaintance with the applicant, or whether he has direct, personal knowledge of the address at which the applicant was residing between December 1, 1981 and January 1988. The lack of detail regarding the events and circumstances of the applicant's residence is significant given his claim to have a friendship with the applicant since 1981. Because [redacted] affidavits are significantly lacking in

relevant detail, they lack probative value and have only minimal weight as evidence of the applicant's residence in the United States during the requisite period.

[redacted] in his letter claims to have employed the applicant on a seasonal basis as a farm laborer from 1987 to 1989 at in Marysville, California. The regulations at 8 C.F.R. § 245a.2(d)(3)(i) provide specific requirements as to what letters from past employers should contain. Letters from employers that do not comply with the specific requirements are not accorded as much evidentiary weight as letters that otherwise comply. In this case, Mr. [redacted]s fails to include some of the most critical information as prescribed by the regulations such as the exact period of employment, periods of layoff, whether or not the information was taken from official company records, and where records are located and whether USCIS may have access to the records.

Further damaging the credibility of the letter is the statement from himself when USCIS contacted him. When asked about the applicant and his past employment, [redacted] stated that he does not know the applicant, nor did he keep records of people who worked at his farm and further asserted that he does not think he signed any letter for the applicant. [redacted] statement regarding the applicant is inconsistent with what he claimed on his letter. 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). Doubt cast on any aspect of the applicant's proof may, of course. lead to a reevaluation of the reliabilitv and sufficiencv of the application. *Id.* at 591. No evidence has been submitted to explain or reconcile the inconsistencies between what [redacted] stated on the telephone and what he wrote. For these reasons, the letter has minimal probative value as evidence of the applicant's residence or presence in the United States between 1987 and 1989.

[redacted] in his affidavit states that he has known the applicant since his arrival in the United States in December 1981 and further claims that the applicant worked at his restaurant as a part-time cook/helper from December 1981 to 1987. As stated above, affidavits of past employment that comply with the regulations are accorded more weight than affidavits that do not comply. Here, the affiant does not specifically reveal whether the information he provided was taken from company records and where records are located and whether USCIS may have access to the records. Furthermore, USCIS tried to locate [redacted] and ask him about the applicant but failed, casting doubt to his credibility and claim that he employed the applicant during the period specified on his affidavit. Since the affidavit is not verifiable and does not fully comply with the regulations, it is not probative as evidence of the applicant's continuous residence in the United States throughout the requisite period.

In his affidavit, [redacted] states that he has known the applicant for almost 20 years and claims that he has been keeping in touch with the applicant since he first met him. The affiant further indicates where the applicant resided from December 1981 to 1986 and where he

moved and lived until 1990 and claims that he has visited the applicant at those addresses. Both [redacted] and [redacted] in their affidavits claim to have known the applicant since 1986 and both state that they met the applicant through a mutual friend. **As stated above,** affidavits containing specific, personal knowledge of the applicant's whereabouts during the time period in question have greater weight than fill-in-the blank affidavits providing generic information. Here, all three affiants fail to describe with sufficient detail that their relationships with the applicant probably did exist and that they, by virtue of that relationships, have knowledge of the facts alleged. For instance, other than stating where the applicant lived at the time when they first met him and where the applicant resided during the requisite period, none of them reveals with any specificity the events and circumstances of how they first met the applicant, how often they met or talked with him during their claimed friendship, or provide other details about their relationships with him to establish the credibility of the assertions. Their general statements such as "I met [redacted](the applicant) through a friend and have attended various social functions together with him" or "I had visited him (the applicant) at his addresses" are not persuasive as evidence of the applicant's continuous residence in the United States since December 1981. Because these affidavits are significantly lacking in relevant detail, they lack probative value and have only minimal weight as evidence of the applicant's residence in the United States during the requisite period. Moreover, USCIS tried to contact [redacted] but could neither locate or talk with him. Since this affidavit is also not verifiable, it is not credible as evidence of the applicant's eligibility for the benefit sought.

Finally, the letter from the Sikh center in the Bay area is not evidence that the applicant has resided in the United States continuously since 1981. The author of the letter fails to include inclusive dates of the applicant's membership, the address or addresses where the applicant resided during the membership period, how the author knows the applicant, and how he acquires the information relating to the applicant's membership in the organization. Because this letters fails to include most of the critical information about the applicant's membership as set by the regulations, it can only be accorded minimal weight as evidence of the applicant's claim of eligibility for the benefit.

While the application should not be denied solely because the applicant has only submitted affidavits to establish continuous residence in the United States for the duration of the requisite period, the submission of affidavits alone will not always be sufficient to support the applicant's claim. The sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6). The fact that the affiants fail to describe with sufficient detail about their relationships with the applicant combined with the fact that some affidavits are not verifiable raises some doubts that the applicant's claim is probably true. Additionally, the inconsistencies between [redacted] statement on the telephone and his letter generate some questions whether the applicant submitted a legitimate document. Finally, the letter from the Sikh center does not meet regulatory standards and does not establish the applicant's membership or residence in the United States during the requisite period. Upon review, the AAO determines that the affidavits and letters mentioned above, when considered individually and in light of other evidence of record, do not establish by a preponderance of the

evidence that the applicant resided continuously and was physically present in the United States from December 1981 through January 1988.

The absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period and lack of detail as well as inconsistencies noted in the record, seriously detract from the credibility of his 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 credible supporting documentation and inconsistencies in the record, it is concluded that the applicant has failed to establish by a preponderance of the evidence that he has continuously resided in an unlawful status in the United States for the requisite period as required 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.