

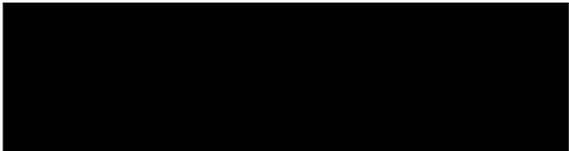
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
MSC-04-332-10464

Office: NEW YORK

Date: FEB 25 2009

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:

SELF-REPRESENTED

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

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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, New York. 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 were neither credible nor amenable to verification. None of the affiants has direct personal knowledge of the events and circumstances of the applicant's residence in the United States, the director further asserted

On appeal, the applicant submits a brief in which he contends that the affidavits submitted are sufficient and credible to establish his continuous residence in the United States for the duration of the requisite period. The applicant further states that [REDACTED], one of the affiants, has been called by an immigration officer and that she has provided a consistent and credible testimony about his residence in the United States during the requisite period.

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 evidence of his continuous residence in the United States since before January 1, 1982, the applicant submitted five affidavits and a letter from the Sikh Cultural Society, Inc. 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, almost all of the affiants claim that the applicant has resided in the United States continuously since December 1981; however, all of them fail to offer indication that they *actually* have direct personal knowledge of the applicant's continuous residence in the United States. For instance, none of them indicates where or under what circumstances they met the applicant, the address or addresses at which the applicant lived during the requisite period, their frequency of contact with him during this period, or any other details of the events and circumstances of the applicant's residence. The lack of detail is significant, considering their

claim that they have been good friends of the applicant for more than 20 years. For this reason, the affidavits have little probative value.

Further detracting from the credibility of the applicant is the inconsistencies between his claim that he was *unemployed* throughout his residence in the United States according to part #33 of his Form I-687 and what [REDACTED] states in his affidavit. In his affidavit, [REDACTED] states that he employed the applicant at his gas station from 1985 to 1988. 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 reliability and sufficiency of the application. *Id.* at 591. No evidence has been submitted to explain or reconcile the inconsistencies between what [REDACTED] claimed in his affidavit and what the applicant typed on his Form I-687.

On appeal, the applicant further contends that [REDACTED] one of the affiants, has provided credible testimony about the applicant's residence in the United States when an immigration officer called her. [REDACTED] in her affidavit claims that the applicant is her distant relative and that the applicant stayed at her house in Canada in 1981 before he entered the United States and again in 1988 when the applicant left the United States to go to India. In response to the director's notice of intent to deny (NOID), the applicant submitted a photocopy of [REDACTED]'s certificate of Canadian citizenship. While [REDACTED] might have testified credibly about the applicant's visits to Canada in 1981 and 1988, her affidavit and testimony do not establish that the applicant resided in the United States continuously between 1981 and 1988. Nowhere in her affidavit does she state that the applicant resided continuously in the United States. [REDACTED] also does not indicate the applicant's specific whereabouts during the requisite period. For these reasons, her affidavit is not probative as evidence of the applicant's residence in the United States during the requisite period.

Finally, the letter from the Sikh Society does not meet regulatory standards and does not establish the applicant's membership or residence in the United States during the requisite period. The regulations at 8 C.F.R. § 245a.2(d)(3)(v) provide specific requirements as to what a letter from an organization should contain. Letters from organizations that do not comply with the specific requirements do not have to be accorded as much evidentiary weight as letters that otherwise comply. In this case, the author of the letter fails to include inclusive dates of the applicant's membership, the address or addresses where the applicant resided during membership period, how the author of the letter knows the applicant, and where he acquires the information relating to his membership in the organization. Because this letter 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 sought.

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). Casting doubt to the applicant's claim that he resided in the United States continuously during the entire requisite period is the fact that all of the affiants fail to indicate that they have direct personal knowledge of the applicant's continuous residence in the United States coupled with the inconsistencies in the record as noted above. Upon review, the AAO determines that the affidavits and letter 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 during the requisite period.

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.