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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship and Immigration Services

[redacted]

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FILE: [redacted] Office: SAN JOSE Date: JUN 29 2009

MSC 05 349 10718

IN RE: Applicant: [redacted]

PETITION: 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. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if the matter 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.

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 Jose, California, and 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 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 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 argues that the director's findings did not comply with the CSS Settlement Agreements as the director did not recognize that the passage of time would prohibit the applicant from providing other evidence. Counsel argues that the director failed to provide cogent or legitimate reasons for disregarding the evidence the applicant offered.

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)(1).

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, consistent with the class member definitions set forth in the CSS/Newman Settlement Agreements. Paragraph 11, page 6 of the CSS Settlement Agreement and paragraph 11, page 10 of the Newman Settlement Agreement.

An alien applying for adjustment of status has the burden of proving 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).

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 including affidavits 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 (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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

Throughout the application process, the applicant, in an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, submitted:

- A letter dated August 11, 1990, from [redacted] assistant head priest of Pacific Coast Khalsa Diwan Society in Stockton, California, who indicated that the applicant has been a regular member of the Sikh Temple since January 17, 1981.
- Affidavits from who attested to the applicant's residences in San Francisco and San Jose since September 1981. The affiant asserted that he met the applicant at the Sikh Temple in Fremont, California in 1981 and would meet almost every month at the temple or at other religious and community functions in California.
- An affidavit from [redacted], who attested to the applicant's residence in Campbell, California since January 1981. The affiant asserted that once a week he and the applicant would socialize.
- An affidavit from an acquaintance, who attested to the applicant's residence at [redacted] Campbell, California since January 1985.

- An affidavit from a brother, [redacted], who indicated that he resided with the applicant when he came to the United States in 1982.
- Affidavits from [redacted] and [redacted], who indicated that they met the applicant in August 1981 and in 1982, respectively. [redacted] indicated that he met the applicant at a friend's wedding in Stockton, California, and [redacted] indicated that he met the applicant at a family birthday party in 1982 in San Jose, California. Both affiants indicated that they have been socializing with the applicant at family, community and religious functions since that time.
- Affidavits from [redacted] and [redacted], who indicated that they first met the applicant in California in October 1984 and November 1984, respectively. The affiants indicated that they and the applicant have met at many community and religious ceremonies since that time.
- An affidavit from [redacted] who indicated that he resided with the applicant when he came to the United States on November 26, 1982, and has remained in contact with the applicant through community and family ceremonies.
- An affidavit from who indicated that he met the applicant at a community function in San Jose, California in August 1981 and has remained in contact with the applicant through community and religious functions.
- Letters dated August 5, 2003, and November 22, 2003, from [redacted], a priest at Gurdwara Sahib in San Francisco, California, who indicated that the applicant had been a member since 1983.
- A cash receipt dated December 11, 1983.
- A photocopy of a photograph counsel claims was taken in the United States in January 1981.

On June 10, 2008, the director issued a Notice of Intent to Deny, which advised the applicant that the affidavits submitted appeared to be neither credible nor amenable to verification and that no evidence was submitted demonstrating that the affiants had direct personal knowledge of the events testified to in their respective affidavits. The applicant was advised that on June 10, 2008, the Service contacted [redacted] and [redacted] Mr. [redacted] indicated that he had known the applicant since 1997 or 1988 as the applicant's brother had purchased a home from him. Ms. [redacted] indicated that the applicant was her brother-in-law and from 1981 to 1990, he resided with her in the state of New York. When asked if she was willing to come forward and testify on the applicant's behalf, [redacted] answered, no. The applicant was also advised that no one answered the telephone number from by [redacted] of Gurdwara Sahik, and the letters from [redacted] and [redacted] failed to meet the requirements outlined in 8 C.F.R. § 245a.2(d)(3)(v).

Counsel, in response, asserted that it was fundamentally unfair to the applicant to delay an investigation for 18 years and then discount the corroborative evidence. Counsel submitted an affidavit from [redacted], regarding the telephone call she received on June 10, 2008. The affiant asserted that she informed the officer, "I arrived in the United States in 1981, that I had

[1] The affiant is also known as [redacted].

resided in New York and California, and that [the applicant] and I had resided together in the United States." The affiant asserted that she did not inform the officer that she and the applicant had continuously resided together in the United States. The affiant indicated that she was not informed that the information she was providing contradicted her affidavit and "did not give me an opportunity to explain any discrepancies perceived in my statement." The affiant stated that had she been given the opportunity, she would have explained that "the applicant and I had not resided together continuously, that he did not reside with me in New York, but had visited and stayed at my home in New York."

As previously noted, the affiant was given the opportunity to explain, but she declined to come forward and testify on the applicant's behalf.

The director determined that the applicant had failed to submit sufficient credible evidence establishing his continuous residence in this country since prior to January 1, 1982, and, therefore, denied the application on July 3, 2008.

The statements issued by counsel have been considered. However, the AAO does not view the documents discussed above as substantive enough to support a finding that the applicant entered the United States prior to January 1, 1982, and resided since that date through the date he attempted to file his application.

As noted by the director, the letters from [redacted] and [redacted] have little evidentiary weight or probative value as they do not conform to the basic requirements specified in 8 C.F.R. § 245a.2(d)(3)(v). Most importantly, the affiants do not explain the origin of the information to which they attest.

The applicant claimed on his Form I-687 application that he was self-employed during the requisite period. However, the applicant provided no evidence such as letters from individuals with whom he had done business as required under 8 C.F R. § 245a.2(d)(3)(i).

The photograph has no identifying evidence that could be extracted which would serve to either prove or imply that the photograph was taken in the United States.

[redacted] in his affidavits, attested to the applicant's residences in San Francisco and San Jose during the requisite period. The applicant, however, did not claim residence in either city until 1993. [redacted] and [redacted] asserted that they resided with the applicant in 1982, but failed to provide the place of residence.

The evidence must be evaluated not by the quantity of evidence alone but by its quality. The remaining affiants' statements do not provide detailed evidence establishing how they knew the applicant, the details of their association or relationship, or detailed accounts of an ongoing association establishing a relationship under which the affiants could be reasonably expected to have personal knowledge of the applicant's residence, activities and whereabouts during the requisite period. To be considered probative, an affiant's affidavit must do more than simply

state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. The affidavit must contain sufficient detail, generated by the asserted contact with the applicant, to establish that a relationship does in fact exist, how the relationship was established and sustained, and that the affiant does, by virtue of that relationship, have knowledge of the facts asserted. The affidavits from the affiants do not provide sufficient detail to establish that they had an ongoing relationship with the applicant for the duration of the requisite period that would permit them to know of the applicant's whereabouts and activities throughout the requisite period.

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. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts 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 applicant's reliance upon documentation with minimal probative value, it is concluded that the evidence submitted fails to establish continuous residence in an unlawful status in the United States during the requisite period as required under section 245A(a)(2) of the Act. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis.

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).

On his initial Form I-687 application, the applicant did not list the dates of birth of his children. On his LIFE application, the applicant listed his children's dates of birth as October 7, 1976, April 15, 1979, February 2, 1979 and September 20, 1981. However, at the time of his LIFE interview on October 17, 2006, the applicant indicated that he had a child born in 1985. The applicant, on his initial and current Form I-687 applications, did not disclose an absence from the United States in 1984 or 1985. The applicant's failure to disclose this absence from the United States is a strong indication that the applicant was not in the United States during this period or may have been outside the United States beyond the period of time allowed by regulation. This further undermines the credibility of the applicant's claim to have continuously resided in the United States since before January 1, 1982, through May 4, 1988.

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