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

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FILE: [redacted] Office: LOS ANGELES Date: MAR 05 2010

MSC 06 081 12821
MSC 08 142 11592 – APPEAL

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. 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.

Perry J. Rhew
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 in Los Angeles, California. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, a native of India who claims to have lived in the United States since September 1981, 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 on December 20, 2005. The director denied the application, finding that the applicant had not established by a preponderance of the evidence that she had continuously resided in the United States in an unlawful status for the duration of the requisite period.

On appeal counsel asserts that the director did not properly evaluate the documents submitted by the applicant in support of her application. In counsel's view, the evidence of record is sufficient to establish that the applicant meets the continuous residence requirement to adjust status under section 245A of the Act. Counsel submits copies of previously submitted documents in the record.

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) 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 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. 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,

and 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 "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. *See* 8 C.F.R. § 245a.2(d)(6). The weight to be given any affidavit depends on the totality of the circumstances, and a number of factors must be considered. More weight will be given to an affidavit in which the affiant indicates personal knowledge of the applicant's whereabouts during the time period in question rather than a fill-in-the-blank affidavit that provides generic information. The regulations provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment or attestations by churches or other organizations. 8 C.F.R. §§ 245a.2(d)(3)(i) and (v).

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 (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 issue in this proceeding is whether the applicant (1) entered the United States before January 1, 1982 and (2) has continuously resided in the United States in an unlawful status for the requisite period of time. The AAO determines that the applicant has failed to meet her burden.

The record includes (1) an undated letter signed by [redacted] the U.S.A. stating that he had known the applicant since September of 1981, when the applicant first came to the United States, that the applicant stayed at the Temple for two weeks before she went back to Riverside, where she became self-employed, and that the applicant had always been involved in the community service; and (2) a letter dated December 7, 2004, signed by [redacted] who identified himself as the "Treasure of Managing Committee/Member of Board of Directors" at Sikh Temple Riverside on Mission Boulevard, Riverside, California, stating that the he has known the applicant since 1981, that the applicant was a member of board of directors of the temple, and that the applicant has helped young children at the temple learn Punjabi language.

The letters listed above do not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(v), which specifies that attestations by religious and related organizations (A) identify the applicant by name, (B) be signed by an official (whose title is shown), (C) show inclusive dates of membership, (D) state the address where the applicant resided during the membership period, (E) include the organization seal impressed on the letter or the letterhead of the organization, (F) establish how the

author knows the applicant, and (G) establish the origin of the information about the applicant. While the letter from Sikh Temple Riverside specified the title of the author, the letter from Sikh Missionary Society of the U.S.A. did not specify the title of the author or that he has the authority to author such letter on behalf of the temple. None of the letters specified whether the applicant was a member of the organization and the precise dates of membership, did not indicate where the applicant lived during the period of her association with the organizations, did not indicate how and when the authors met the applicant, and whether their information about the applicant was based on their personal knowledge, the organizational records, or hearsay. Since the letters did not comply with sub-parts (B), (C), (D), (F), and (G) of 8 C.F.R. § 245a.2(d)(3)(v), the AAO concludes that they have little probative value. The letters are not persuasive evidence of the applicant's continuous residence in the United States from before January 1, 1982 through the requisite period.

The record includes letters and affidavits from individuals who claim to have employed, resided with, or otherwise known the applicant in the United States during the requisite period, have minimalist or fill-in-the-blank formats with very few details about the applicant's life in the United States and the nature and extent of their interactions with her over the years. The letters and affidavits are not supplemented by any documentary evidence – such as photographs, letters, and the like – of the authors' personal relationships with the applicant in the United States over the years. Furthermore, while some of the authors provided documents to establish their identities, none provided documents to establish their residence in the United States during the requisite period.

The letters from [redacted] and [redacted] who claim to have employed the applicant starting from November 1981 to perform various duties, including babysitting, tutor, and housekeeping, do not comport with the requirements at 8 C.F.R. § 245a.2(d)(3)(i). The letters did not specify the applicant's address during the time of employment, did not declare whether the information about the applicant was taken from company records, and did not indicate the location of such records and whether they are available for review. The letters are not accompanied by any pay stubs, earnings statements, or tax records from the employers or the applicant to show that she was actually employed during any of the years in question. Additionally, the letters are contrary to the employment information provided by the applicant on the Form I-687 she filed in December 2005.

[redacted] claims that she has known the applicant since September 1981, that she provided room and board to the applicant and that she helped the applicant find work. [redacted] did not provide the address of the property where the applicant resided or how long the applicant resided with her.

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 without competent objective evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *See id.* For all the reasons discussed above, the AAO determines that the letters and affidavits have little probative value as credible evidence of the applicant's continuous residence in the United States during the requisite period.

The record also includes other documents which the applicant submitted with her Form I-485. A letter from University of Wisconsin-Whitewater dated February 15, 1982, with corresponding envelope postmarked February 19, 1982; a letter from Devki Devi Jain Memorial College for Women in India, dated October 4, 1982, with corresponding envelope postmarked October 4, 1982; and a letter from MCI World Message Services in Houston, Texas, dated October 5, 1982, with corresponding envelope postmarked October 7, 1982. These letters were addressed to the applicant at [redacted]. The address is inconsistent with the address claimed by the applicant on the Form I-687 she filed in 2005. Additionally, the AAO in its decision to deny the applicant's Form I-485 appeal found that the stamps on the corresponding envelopes are not genuine. The stamp on the envelope postmarked February 19, 1982, was not issued until May 28, 1988, and the stamp on the envelope postmarked October 4, 1982, was not issued until January 1, 1988. As previously indicated, doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *See Matter of Ho, id.*

As noted above, the applicant has provided contradictory testimony and information in support of her application. The applicant has failed to submit any objective evidence to explain or reconcile the discrepancies and contradictions in the record. Therefore, it must be concluded that the applicant has failed to meet her continuous residence requirement to adjust status under section 245A of the Act.

Upon a *de novo* review of all of the evidence in the record, the AAO agrees with the director that the evidence submitted by the applicant has not established that she is eligible for the benefit sought.

Therefore, based upon the foregoing analysis of the evidence, the applicant has failed to establish by a preponderance of the evidence that she entered the United States before January 1, 1982 and 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.