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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

L1

[redacted]

FILE: [redacted] Office: SACRAMENTO Date: MAR 07 2011

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 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, Sacramento, California. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because she found the evidence submitted with the application was insufficient to establish eligibility for Temporary Resident Status pursuant to the terms of the CSS/Newman settlement agreements. Specifically, the director noted that the applicant submitted a sworn statement dated August 28, 2003 in which he testified that he departed the United States in 1987 for eight or nine months to get married in India, returning in May or June 1988. The director noted that this statement is consistent with the applicant's Form for Determination of Class Membership submitted with his 1991 Form I-687 Application for Temporary Resident Status. Noting that this absence exceeds the 45 day limit for a single absence during the relevant period, the director denied the application on May 8, 2007.

On appeal, the applicant asserts that he has submitted sufficient evidence of his eligibility. He indicates that he is not fluent in English and that his due process rights were violated. He indicates that he departed the United States in 1988 for 8-9 weeks to get married in India. The applicant also requested a copy of the record of proceedings. This request was processed on June 8, 2010.[1]

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Following *de novo* review, the AAO finds that the applicant has failed to establish his continuous residence in the United States from January 1, 1982 through the end of the relevant 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)(1).

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

[1] [redacted]. It is noted that the record contains a previous request for the record of proceeds under Freedom of Information Act (FOIA). This request was processed on February 13, 2006. (*See* [redacted]).

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.

In support of his assertion that he (1) entered the United States before January 1, 1982 and (2) has continuously resided in the United States in an unlawful status throughout the relevant period, the applicant submits the following:

- A letter from the [redacted]. indicating that the applicant has been a member of the church since 1981. This letter does not conform to the statutory requirements for attestations by churches, unions, or other organizations, which is found at 8 C.F.R. § 245a.2 ((d)(3)(v). That regulation requires such attestations to "show the inclusive dates of membership and state the address where the applicant resided during the membership

period." The letter fails to provide dates of the applicant's membership or any other information that is probative of the issue of his initial entrance to the United States prior to January 1981 or his continuous residence for the duration of the statutory period. Thus, it can be given no probative weight.

- Employment verification letters from [redacted] and [redacted]. All four letters indicate that the applicant worked for the company during the relevant period, and the applicant lists the employers of his current Form I-687. However, the letters fail to meet certain regulatory standards set forth at 8 C.F.R. § 245a.2(d)(3)(i), which provides that letters from employers must include the applicant's address at the time of employment; exact period of employment; whether the information was taken from official company records and where records are located and whether United States Citizenship and Immigration Services (USCIS) may have access to the records; if records are unavailable, an affidavit form-letter stating that the employment records are unavailable may be accepted which shall be signed, attested to by the employer under penalty of perjury and shall state the employer's willingness to come forward and give testimony if requested. The statements submitted do not include much of the required information and can be afforded minimal weight as evidence of the applicant's residence in the United States for the duration of the requisite period.

- Affidavits from [redacted], [redacted], [redacted], [redacted] and [redacted]. All of the affiants indicate that they met the applicant in [redacted] Most indicate that they were introduced to the applicant at [redacted]. The applicant does not indicate on his Form I-687 that he moved to California until 1991. He does not list membership in any organizations in California on his Form I-687. It is unclear how the affiants can testify to their continuous association with the applicant in California when he lived in New York for the entire relevant period. The affidavits will be given no evidentiary weight.

- A letter from [redacted] California. [redacted] indicates that he met the applicant in 1983 and that the applicant is a "regular" at the Temple. The applicant fails to list his association with this Temple on his Form I-687. It is also unclear how the applicant could regularly attend a Temple in California while residing in New York. This letter will be given little evidentiary weight.

- An affidavit from [redacted] who indicates that the applicant was his tenant at [redacted] beginning in December 1986. This is inconsistent with the applicant's Form I-687 in which he indicates that he resided at [redacted] from 1980 until 1991. It is also inconsistent with the applicant's previous Form I-687 in which he indicates that he lived at [redacted] New York from December 1980 until November 1984. 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.

- An affidavit from [redacted], who indicates that the applicant visited him in Canada from October 4, 1987 until October 26, 1987. The dates have been altered. Additionally, the applicant stated on appeal and in response to the Notice of Intent to Deny (NOID) of his LIFE Act application dated December 11, 2003 that he left the United States "for the first time in June 1988 to get married . . . after that I left for Canada in October 1988 for two weeks." Furthermore, the applicant does not list this absence on his previous Form I-687. He does list this absence on his current Form I-687, however, his testimony contradicts the dates of his absence listed on his application. As noted above, it is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. The applicant has not resolved this inconsistency or presented any evidence which supports his eligibility.

As noted by the director, the applicant has provided inconsistent information regarding the dates of his absences during the relevant period. Specifically, the applicant submitted a sworn statement dated August 28, 2003 in which he testified that he departed the United States in 1987 for eight or nine months to get married in India, returning in May or June 1988. The director noted that this statement is consistent with the applicant's Form for Determination of Class Membership submitted with his 1991 Form I-687 Application for Temporary Resident Status. In a statement signed by the applicant January 5, 2004, submitted to USCIS in response to the NOID dated December 11, 2003, the applicant indicates that he entered the United States in December 1980 and remained in the United States until June 1988 when he returned to India to get married. However, in a statement submitted to USCIS on September 30, 2004, the applicant indicates that he first left the United States in October 1987 to see a friend in Canada and that he left again in June 1988 to get married in India. The applicant has not submitted any objective independent evidence which clarifies his absences and/or supports his continuous residence throughout the relevant period. Thus, the AAO agrees with the director that the applicant has not established his continuous residence in the United States throughout the relevant period due to his absences which exceed the 45 day limit for a single absence.

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 he is eligible for the benefit sought.

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that he 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.