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U.S. Department of Homeland Security  
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U.S. Citizenship  
and Immigration  
Services

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FILE:

MSC 06 103 12195

Office: Denver

Date:

APR 28 2008

IN RE:

Applicant:

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:

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.

Robert P. Wiemann, 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 District Director, Denver, Colorado, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director determined that the applicant had not demonstrated that she had continuously resided in the United States in an unlawful status since before January 1, 1982 through the date that she attempted to file a Form I-687, Application for Status as a Temporary Resident, with the Immigration and Naturalization Service or the Service (now Citizenship and Immigration Services or CIS) in the original legalization application period between May 5, 1987 to May 4, 1988. Therefore, the district director concluded that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements and section 245A of the Immigration and Nationality Act (Act) denied the application.

On appeal, the applicant disputes findings made by the district director in denying her Form I-687 application. The applicant indicates that a brief in support of her appeal would be forthcoming within thirty days. However, as of the date of this decision the applicant has failed to submit a statement, brief, or additional documentation to supplement her appeal. Therefore, the record must be considered complete.

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 Immigration and Nationality Act (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. 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 regulation at 8 C.F.R. § 245a.2(d)(3)(v) states that attestations by churches, unions, or other organizations to the applicant's residence by letter must: identify applicant by name; be signed by an official (whose title is shown); show inclusive dates of membership; state the address where applicant resided during membership period; include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; establish how the author knows the applicant; and, establish the origin of the information being attested to.

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 establish continuous residence in the United States from prior to January 1, 1982 through the date she attempted to file a Form I-687 application with the Service in the original legalization application period from May 5, 1987 to May 4, 1988. Here, the submitted evidence is not relevant, probative, and credible.

The record shows that the applicant submitted a Form I-687 application and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on January 11, 2006. At part #30 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the applicant listed [REDACTED] in Fresno, California from November 1981 through November 1991 and [REDACTED] in Selma, California from November 1984 to November 1991. At part #31 of the Form I-687 application where applicants were asked to list all affiliations or associations with clubs, organizations, churches, unions, businesses, etc., the applicant listed associations with the Sikh Center of the Pacific Coast in Caruthers, California and the Sikh Center of the Pacific Coast in Selma, California from November 1981 to December 1991. Further, at part #33 of the Form I-687 application where applicants were asked to list all

employment in the United States since entry, the applicant listed employment as a farm laborer at [REDACTED] in Fresno, California from January 1983 to January 1988.

In support of her claim of continuous residence in the United States since prior to January 1, 1982, the applicant submitted four affidavits all signed by [REDACTED] two of which are dated March 16, 1992 with the remaining two affidavits dated March 31, 1992. In the two affidavits dated March 16, 1992, [REDACTED] stated that he had personally known the applicant, her son, and her daughter in that period from November 5, 1981 to November 5, 1991 and that he employed the applicant as a seasonal laborer for cash on his farm from January 1983 to January 28, 1988. In the two affidavits dated March 31, 1992, [REDACTED] declared that he provided the applicant with room and board in his home at [REDACTED] in Fresno, California from November 5, 1981 to November 5, 1991 and that he employed the applicant as a seasonal laborer for cash on his farm.

The applicant provided two affidavits that are signed by [REDACTED] and dated April 10, 1992 and April 15, 1992, respectively. In both affidavits, [REDACTED] asserted that the applicant was his niece and she had visited and stayed with him in Canada from July 4, 1987 to July 30, 1987 before returning to the United States. However, [REDACTED] failed to provide any specific and verifiable testimony to corroborate the applicant's claim of residence in this country for the requisite period.

The applicant submitted an original receipt from the Sikh Temple of the Pacific Coast in Caruthers, California dated December 2, 1982 that reflected she made a \$20.00 contribution to this religious institution on this date. The applicant also included an affidavit containing the letterhead of the Sikh Temple of the Pacific Coast in Selma, California that is dated January 15, 2003 and signed by [REDACTED]. Mr. [REDACTED] stated that he had been president of this Sikh Temple from May 1986 to 1990 and he was currently serving as this religious institution's vice-president. Mr. [REDACTED] noted that he had known the applicant since November 1981 as they had "been meeting each other at various Fresno/Selma Community churches and other community gatherings." Nevertheless, [REDACTED] failed to provide the applicant's address of residence during the period she was associated with the Sikh Temple of the Pacific Coast as required by 8 C.F.R. § 245a.2(d)(3)(v).

A review of the record reveals that the applicant had previously submitted multiple applications and other documents to the Service and its successor CIS including another separate Form I-687 application on or about April 21, 1992. At part #33 of this Form I-687 application (the difference in the numbering of parts on the two separate Form I-687 applications is explained by the fact that the application was revised as of October 26, 2005) where applicants were asked to list all residences in the United States since first entry, the applicant listed "[REDACTED]" in Fresno, California from November 1981 through November 1991. At part #35 of the Form I-687 application where applicants were asked to list all affiliations or associations with clubs, organizations, churches, unions, businesses, etc., the applicant failed any affiliations or association with any group. The applicant's testimony that she resided solely on [REDACTED] in Fresno, California during the requisite period and was not affiliated or associated with any group on the Form I-687 application filed on or about April 21, 1992 conflicted with her subsequent testimony that she also resided on [REDACTED] in Selma, California from November 1984 to January 1991 and that she was associated with the Sikh Center of the Pacific Coast in Caruthers, California and the Sikh Center of

the Pacific Coast in Selma, California from November 1981 to December 1991 on the Form I-687 application filed on January 11, 2006.

The record shows that the applicant appeared for an interview relating to the Form I-687 application filed on or about April 21, 1992 at the Service's Legalization Office in Seattle, Washington on August 2, 1993. The notes of the interviewing officer reveal that the applicant testified under oath that she lived at [REDACTED] in Selma, California from 1984 to 1991. The applicant's testimony during this interview that she resided at this address in Selma, California directly contradicted her previous testimony that she lived solely at [REDACTED] in Fresno, California from November 1981 through November 1991 at part #33 of the Form I-687 application filed on or about April 21, 1992. Further, such testimony does not correspond to applicant's subsequent testimony that she lived at both addresses on the Form I-687 application filed on January 11, 2006.

The record shows that the applicant's husband submitted a Form I-589, Request for Asylum, to the Service on July 22, 1994. The Form I-589 asylum application listed the applicant's husband as the principle beneficiary and the applicant, her son, and her daughter as derivative beneficiaries. The record reflects that the Form I-589 asylum application of the applicant's husband and supporting documents have been consolidated into the current record of proceedings. On the Form G-325A, Record of Biographic Information, which accompanied the Form I-589 asylum application of the applicant's husband, the applicant indicated that she resided at "[REDACTED]" in Selma, California from November 1984 to November 1991. As discussed previously, the applicant's testimony that she resided at this address in Selma, California directly contradicted her previous testimony that she lived at [REDACTED] in Fresno, California from November 1981 through November 1991 on the Form I-687 application filed on or about April 21, 1992 and did not correspond to applicant's subsequent testimony that she lived at both addresses on the Form I-687 application filed on January 11, 2006.

On May 28, 1996, the applicant submitted a declaration in which she claimed that she had misinterpreted a question during her interview on August 2, 1993 and mistakenly believed that the interviewing officer has asked her the address of [REDACTED], the individual who had provided her with housing and employment during the requisite period. The applicant contended that [REDACTED] had purchased the property on [REDACTED] in Selma, California while he still owned his original home and property on [REDACTED] in Fresno, California. The applicant asserted her lack of proficiency in English caused her to indicate that this was her address rather than an additional property owned by [REDACTED]. Regardless, the applicant failed to provide any evidence to demonstrate that [REDACTED] owned property located on either [REDACTED] in Selma, California or [REDACTED] in Fresno, California. In addition, the applicant's explanation conflicted with her subsequent testimony that she lived at both addresses on the Form I-687 application filed on January 11, 2006.

On February 15, 2002, the applicant filed her Form I-485 LIFE Act application. At part #3C of the Form I-485 LIFE Act application where applicants were asked to list their memberships in or affiliations with every political organization, association, fund, foundation, party, club, society, or similar group, the applicant listed "none." The applicant's testimony that she had no associations or

affiliations with any groups during the requisite period on the Form I-485 LIFE Act application again conflicted with her subsequent testimony on the Form I-687 application filed on January 11, 2006 that she was associated with the Sikh Center of the Pacific Coast in Caruthers, California and the Sikh Center of the Pacific Coast in Selma, California from November 1981 to December 1991. No explanation was put forth as to why the applicant failed to list her affiliations with the Sikh Temple of the Pacific Coast on either the Form I-687 filed on or about April 21, 1992 or the Form I-485 LIFE Act application if in fact she was associated with these groups since November 1981.

In the notice of intent to deny issued on March 30, 2006, the district director informed the applicant of the intent to deny her application because she had failed to submit sufficient credible evidence of residence in the United States during the requisite period. The applicant was granted thirty days to respond to the notice and submit additional evidence in support of her claim of residence in this country since prior to January 1, 1982.

In response, the applicant submitted an affidavit that is signed by [REDACTED] r. Ms. [REDACTED] declared that she was the applicant's sister and had knowledge the applicant moved to the United States at the end of 1981 and had stayed in this country since such date. Ms. [REDACTED] indicated that she had maintained telephone contact with her sister since she moved to the United States. However, [REDACTED] failed to provide any specific and verifiable information to substantiate the applicant's claim of residence in this country for the requisite period. Further, it must be noted that the probative value of [REDACTED]'s testimony is limited in that she has acknowledged that she is the applicant's sister, an immediate family member who must be viewed as having an interest in the outcome of proceedings, rather than an independent and disinterested third party.

The applicant provided an affidavit signed by [REDACTED] who claimed that he had known the applicant since December of 1985 when both he and the applicant lived in California. [REDACTED] asserted that he and the applicant became very good friends who tried to help each other in every way possible including accompanying the applicant to the Service's District Office in Los Angeles, California in 1986. Regardless, [REDACTED] failed to attest to the applicant's residence in this country from prior to January 1, 1982 up through that date he met the applicant in December of 1985. In addition, Mr. [REDACTED] failed to provide any relevant and verifiable testimony to corroborate the applicant's claim of residence in this country after December 1985 through the end of the requisite period.

The record contains notes reflecting that a CIS officer contacted [REDACTED], the same individual who previously provided an affidavit containing the letterhead of the Sikh Temple of the Pacific Coast in Selma, California dated January 15, 2003, by telephone on April 17, 2007. During the course of this conversation, [REDACTED] stated that he could not remember the applicant. The fact that [REDACTED] could not remember the applicant despite previously providing an affidavit approximately four years prior to this conversation in which he claimed he had been meeting with the applicant "at various Fresno/Selma Community churches and other community gatherings" since November 1981 brings in question the probative value of testimony contained in his affidavit.

The record also contains the results of a search of the website at <http://kepler.ss.ca.gov/> for corporate information relating to the enterprise the applicant listed as her employer during the requisite period at part #33 of the Form I-687 application filed on January 11, 2006, Singh Farms at [REDACTED]

in Fresno, California. This search revealed no information to demonstrate that [REDACTED] ever owned or operated such an enterprise at this location at any time including that period from prior to January 1, 1982 through the original legalization application period from May 5, 1987 to May 4, 1988.

The district director cited the discrepancies discussed above and determined that the applicant had failed to submit sufficient credible evidence establishing her continuous residence in this country since prior to January 1, 1982. Consequently, the district director denied the Form I-687 application on May 11, 2007.

On appeal, the applicant asserts that the reason why no corporate records were found relating to [REDACTED] was that the enterprise owned by [REDACTED] for whom she worked was not named [REDACTED]. However, the applicant fails to specify the name of the farm where she had worked for [REDACTED] during the requisite period. Additionally, as has been noted the applicant failed to provide any evidence to demonstrate that [REDACTED] owned property located on [REDACTED] in Fresno, California or [REDACTED] in Selma, California during the requisite period or any time thereafter.

The applicant contends that she can provide documentation to establish that an individual who provided an affidavit in support of her claim of residence, K [REDACTED] was residing in the United States in the 1980's. However, the fact that the applicant can provide evidence to establish [REDACTED]'s residence is irrelevant as he only attested to the applicant's residence in this country after December 1985 and provided no testimony to corroborate her claim of residence in this country from prior to January 1, 1982 up through that date he met the applicant in December of 1985.

The applicant claims that [REDACTED] of the Sikh Temple of the Pacific Coast in Selma, California could not remember her because he meets many people every day at the temple and significant amount of time had passed since such events occurred. Nevertheless, the applicant's explanation is inadequate as [REDACTED] executed the affidavit in which he attested to the applicant's affiliation with this religious institution since November 1981 on January 15, 2003, just over four years prior to the telephonic conversation on April 17, 2007 in which he stated he did not know the applicant.

The absence of sufficiently detailed supporting documentation and the applicant's contradictory testimony relating to her addresses of residence seriously undermine the credibility of her claim of residence in this country for the requisite period, as well as the credibility of the documents submitted in support of such claim. Pursuant to 8 C.F.R. § 245a.2(d)(3), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. The applicant has failed to submit sufficient credible documentation to meet her burden of proof in establishing that she has resided in the United States since prior to January 1, 1982 to May 4, 1988 by a preponderance of the evidence as required under both 8 C.F.R. § 245a.2(d)(3) and *Matter of E- M-*, 20 I&N Dec. 77 (Comm. 1989).

Given the applicant's reliance upon documents with minimal or no probative value and her own conflicting testimony, it is concluded that she has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through May 4, 1988 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.

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