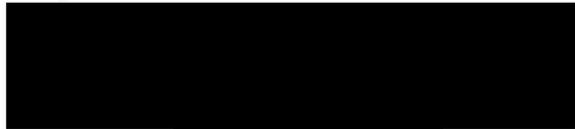


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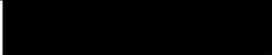
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Services

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FILE:



Office: NEW YORK

Date:

AUG 28 2008

MSC 04 286 10599

IN RE: Applicant:



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:



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.

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, 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. 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, the applicant asserts that he has established his unlawful residence for the requisite time period, that he is qualified under Section 245A of the Act and the CSS/NEWMAN settlement agreements, and that his application for temporary resident status should be granted.

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 245(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 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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her 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).

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).

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.* at 80. 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, 431 (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 has furnished sufficient credible evidence to demonstrate that he resided in the United States for the duration of the requisite period. Here, the applicant submitted the following documentary evidence:

AFFIDAVITS

- [REDACTED] submitted a sworn statement wherein he stated that he had known the applicant as a friend since June of 1981, and that he knows that the applicant resided in the United States from 1981 to 2006. The affiant states that he first met the applicant at the temple, and that from 1981 – 1985 the affiant resided in Flushing, NY. The affiant states that from 1981 – 1990 the applicant resided in Caruthers, CA.
- [REDACTED] submitted a sworn statement wherein he stated that he had known the applicant as a friend since September of 1981, and that he knows that the applicant resided in the United States from 1981 – 2006. The affiant states that he first met the applicant “at the work place,” and from 1981 – 1987 the affiant resided in Flushing, NY. The affiant states that from 1981 – 1991 the applicant resided in Caruthers, CA.
- [REDACTED] submitted a sworn statement wherein he stated that he had known the applicant as a friend since March of 1985, and that he knows that the applicant resided in the United States from 1985 – 1986 because the applicant lived with him. The affiant further

states that during 1985 he resided in Richmond Hill, NY, and that from 1985 – 1986 the applicant lived in Richmond Hill, NY.

- [REDACTED] submitted a sworn statement wherein he stated that he had known the applicant as a friend since 1987, that the applicant lived with him in Flushing, NY in 1987.
- [REDACTED] submitted a sworn statement wherein he stated that he had personal knowledge that the applicant resided in Caruthers, CA from June of 1981 until August 22, 1990 (the date of the affidavit). The affiant states that he worked with the applicant when he first came to the United States, that the two became friends and visit each other often.
- [REDACTED] submitted a sworn statement wherein he stated that in June of 1987 the applicant rode with him to and from Canada.

APPLICANT'S UNSWORN STATEMENT

The applicant submitted an unsworn statement dated August 27, 1990 wherein he states that he has continuously resided in the United States since June 11, 1981, and that from June 11, 1981 until August 27, 1990 (the date of the statement) the applicant supported himself by performing odd jobs for cash.

On appeal, the applicant submitted an unsworn statement wherein he states that he continuously resided in California from June of 1981 until August of 1990. The applicant states that he traveled to New York for a couple of weeks to explore employment possibilities, but that he never established a permanent residence there. The applicant states that during his legalization interview, he made a mistake when he indicated that he moved to New York. The applicant further denies ever paying an immigration officer to have his employment authorization renewed, and states that he left the United States in 1987 and not 1985, and that he may have made a mistake at his legalization interview about his departure date.

ORGANIZATION ATTESTATION

The affiant submitted an unsworn statement from [REDACTED] Cultural Society, Inc. [REDACTED] states that the applicant has been a member of the congregation "for a long time," and that the applicant comes to the temple regularly. The regulation at 8 C.F.R. § 245a.2(d)(3)(v) provides that attestations to an applicant's residence by churches, unions, or other organizations may be made by letter which:

- (A) Identifies applicant by name;
- (B) Is signed by an official (whose title is shown);
- (C) Shows inclusive dates of membership;

- (D) States the address where applicant resided during membership period;
- (E) Includes the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery;
- (F) Establishes how the author knows the applicant; and
- (G) Establishes the origin of the information being attested to.

The attestation provided by the Sikh Cultural Society does not establish the applicant's residence during the requisite period as it does not comply with the above cited regulation. The attestation by [REDACTED] does not state how long the applicant was a member of the Sikh Cultural Society, Inc. congregation, simply stating that the applicant has been a member "for a long time." Thus, the attestation has not established that the applicant was a member of the aforementioned organization at any time during the requisite period. The attestation letter does not state the applicant's residence, and does not reference organizational membership records or otherwise specifically state the origin of the information being attested to. For these reasons, the attestation is not deemed probative and is of little evidentiary value.

The applicant provides no additional evidence in support of the application.

As stated earlier in this decision, an applicant must provide evidence of eligibility apart from his or her own testimony, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. The evidence submitted in support of the applicant's claim consists of the above listed witness statements and the applicant's personal statement. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. None of the witness statements provided detailed information establishing the extent of the witness' association or relationship with the applicant, or detailed accounts of the ongoing association establishing a relationship under which the witness could be reasonably expected to have personal knowledge of the applicant's residence, activities and whereabouts during the requisite period covered by the applicant's Form I-687. The affidavits state simply that the affiants know the applicant and that they have knowledge that the applicant lived in the United States.

To be probative, affidavits or witness statements and related proof 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 proof must be presented in sufficient detail 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 alleged. 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

documents with minimal probative value, it is concluded that the documentation submitted fails to establish continuous residence in an unlawful status in the United States for the requisite period.

It should further be noted that the applicant has submitted conflicting evidence in an effort to establish his residence in the United States during the requisite period. The affidavit of [REDACTED] states that the applicant lived with him in New York from 1985 – 1986. The affidavit of [REDACTED] states that the applicant lived with him in New York in 1987. The applicant states in his Form I-687 and at his interview on June 2, 2005, that he resided in California from June of 1981 until June of 1991. He further states, on appeal, that he resided in California from June of 1981 until 1990 (the date of the [REDACTED]). The record contains no explanation for the conflicting statements made in the [REDACTED] and Pritpal Singh affidavits about the applicant's residence from 1985 – 1987. Those affiants state that the applicant resided in New York during those years, while the affiant states that he resided in California. The inconsistencies are material to the applicant's claim as they pertain to the applicant's residence during the requisite period. The evidence provided by the applicant, therefore, is not deemed credible and shall be afforded little weight. 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. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

As previously noted, in order to meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her 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).

Based upon the foregoing, 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.