

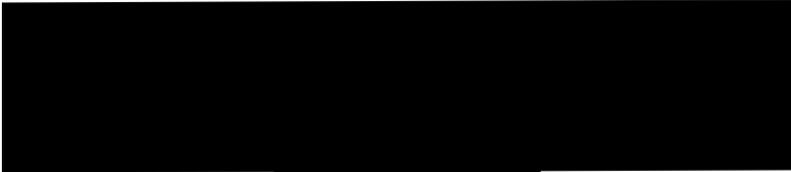
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

L1



FILE: MSC 06 095 11056 Office: NEW YORK Date: DEC 29 2008

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:



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.

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, 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 on January 3, 2006. Upon review, the director determined that insufficient evidence has been presented to establish eligibility under section 245A of the Act. On July 14, 2006, the director issued a notice of intent to deny (NOID) stating that the applicant had not established by a preponderance of the evidence that he had entered the United States prior to January 1, 1982 and thereafter resided continuously in the United States for the duration of the requisite period. The applicant was granted 30 days from the date of the notice to submit additional evidence in response to the NOID. In response to the NOID, on August 14, 2006, the applicant submitted two affidavits. The director denied the application, finding that the applicant had not provided credible evidence to establish that he had continuous residence in the United States in an unlawful status since prior to January 1, 1982 and for the duration of the requisite period.

On appeal, the applicant states in his brief that there was a typographical error on his Form I-687 application and that he did reside in the United States continuously from August 1981. The applicant requests that the two affidavits previously submitted from [REDACTED] and [REDACTED] be reconsidered.

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.

At issue in this proceeding is whether the applicant submitted sufficient credible evidence to meet his burden of establishing that he (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. Here, the applicant has failed to meet this burden.

At part #30 of the Form I-687 application where the applicant was asked to list his places of residence in the United States he indicated that he resided in New York from August 1981 to December 1984 and from January 1985 to December 1988, he resided in California. He listed at part #33 of his Form I-687 application that he was employed as a helper with [REDACTED] from March 1981 to April 1986 in New York. The applicant also states that he was self-employed as a vendor from May 1986 to December 1988 but the address is not indicated. On the Form I-687, the applicant lists one absence from the United States during the requisite period, from January 1986 to April 1986.

In an interview conducted on March 29, 2006, the applicant stated that he first entered the United States in March 1981 through Canada using a fraudulent passport. He also stated that he departed the United States on two occasions. One departure was from January 1986 to March 1986 and he returned without inspection through Canada. The other departure was from December 1988 until 1999 when he returned using a visa. The record contains a copy of the applicant's Form I-94 Departure Record showing the applicant was admitted into the United States on June 18, 1999 at San Francisco, California.

In an attempt to establish entry into the United States before January 1, 1982, and continuous unlawful residence in the United States, the applicant provided two sworn affidavits, a letter from his church and a copy of his passport. The AAO will consider all of the evidence relevant to the requisite period.

The sworn affidavit submitted by [REDACTED] and [REDACTED] fail to attest to the applicant's illegal entry into the United States prior to January 1, 1982 and his continuous unlawful residence in the United States for the duration of the requisite period. In their affidavits, the affiants state that they have known the applicant since 1981. The affiants fail to specify how and where they met the applicant. The affiants fail to specify the frequency with which they saw and communicated with the applicant during the requisite period. The affiants fail to explain how they gained the personal knowledge of the applicant's continuous presence in the United States throughout the requisite period. The affidavits do not include sufficient detailed information about the claimed relationship and the applicant's unlawful entry in March 1981 and continuous residency in the United States throughout the requisite period. The affiants fail to indicate any other details that would lend credence to their claimed acquaintance with the applicant and the applicant's residence in the United States during the requisite period. To be considered probative and credible, witness affidavits 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. Their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged. Upon review, the AAO finds that the affidavits do not contain sufficient detail to establish the reliability of its assertions. The applicant on appeal did not refute any of the director's concerns regarding the lack of evidence provided to prove his entry prior to January 1, 1982 and his continuous residency in an unlawful status throughout the requisite period. The affidavits, while providing some evidence of the applicant's presence in the United States, are insufficient to establish the applicant's 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 requisite period.

An applicant shall be regarded as having resided continuously in the United States if, at the time of filing of the application for temporary resident status no single absence from the United States has exceeded 45 days between January 1, 1982 through the date the application for temporary resident status is filed, unless the applicant can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed. 8 C.F.R. § 245a.1(c)(1)(i).

The applicant's Form I-687 indicates at part #32 that the applicant visited his family in India from January 1986 until April 1986. The applicant states on appeal that this was a typographical error. He explained in his response to the NOID that he returned to the United States from India on March 1986 and therefore, did not exceed 45 days outside the United States. Absent credible evidence, the applicant has not established that he resided continuously in the United States during the requisite period. There is no evidence that an emergent reason prevented the applicant from returning to the United States in 1986, and therefore, the applicant has not resided continuously in the United States as that term is used in section 245A(a)(2) of the Act.

The applicant's Form I-687 also indicates that the applicant lived in New York from August 1981 until December 1984 and in California from January 1985 until December 1988. However, Form I-687 indicates that he was employed in New York by [REDACTED] from March 1981 until April 1986. His employment in New York contradicts with the time period the applicant claimed to be residing in California. No explanation is provided regarding the contradictions as to the dates the applicant resided in New York and California. The contradictions are material to the applicant's claim in that they have a direct bearing on the applicant's entry into and residence in the United States during the requisite period. 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 petitioner 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).

The record also contains a letter from The Sikh Cultural Society, Inc. dated November 24, 2005 signed by [REDACTED] priest. The letter states that the applicant has been a regular member of the congregation for a long time and comes to church regularly. The statement does not corroborate any of the information given by the applicant concerning his initial entry, periods and places of residence and employment in the United States. Further, the regulation at 8 C.F.R. § 245a.2(d)(3)(v) provides requirements for attestations made on behalf of an applicant by churches, unions, or other organizations. Attestations must (1) identify applicant by name; (2) be signed by an official (whose title is shown); (3) show inclusive dates of membership; (4) state the address where applicant resided during membership period; (5) include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; (6) establish how the author knows the applicant; and (7) establish the origin of the information being attested to. The letter did not contain all of the aforementioned requirements and therefore will be given nominal weight.

In the instant case, the applicant has failed to submit sufficient evidence to overcome the director's denial. The applicant's absence from the United States from January 1986 until April 1986, calls into question the credibility of the applicant's claim of continuous unlawful residence in the United States throughout the requisite period. The evidence submitted is insufficient to establish the

applicant's 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 requisite period.

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.