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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: [REDACTED]
MSC-06-068-12593

Office: NATIONAL BENEFITS CENTER

Date: FEB 11 2006

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. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case 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 Director, National Benefits Center. 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 furnishes additional documentary evidence of his residence in the United States during the requisite 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 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).

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 submitted evidence is not relevant, probative, and credible.

The record shows that the applicant submitted a Form I-687 application and supplement to Citizenship and Immigration Services (CIS) on December 7, 2005. The applicant signed this application under penalty of perjury, certifying that the information he provided is true and correct. However, the applicant failed to provide on this application any information on his residence and employment in the United States. The applicant also failed to provide any information on his affiliations or associations with any clubs, organizations, churches or businesses in the United States. The applicant’s submission of an incomplete Form I-687 application draws into question the overall credibility of his claimed residence in the United States during the requisite period.

The applicant submitted with his application three “fill in the blank” form letters entitled “declaration” as evidence of his residence in the United States during the requisite period. These identical form letters, signed by [REDACTED] and [REDACTED], provide, in part, “I am aware that [REDACTED] was turned away by Immigration and Naturalization Service during the application period May 5, 1987 and May 4, 1988. That he has resided in the United States continuously since his entry in 1981 through May 1988.” These letters are deficient because they fail to provide specific information on the author’s direct

personal knowledge of the applicant's residence in the United States during the requisite period. The letters do not indicate how the author first became acquainted with the applicant and their contact during the requisite period. Therefore, the letters can only be afforded minimal weight as credible corroborating evidence.

The director denied the application on June 19, 2006. In denying the application the director determined that the applicant has failed to show by a preponderance of the evidence his residence in the United States during the requisite period. The director noted, "[y]ou also submitted affidavits from [REDACTED] and [REDACTED]. These affidavits do not include identification, a contact phone number, any proof that the affiants were present in the United States during the statutory period, nor any proof of direct knowledge of the events being attested." The director concluded that the applicant has failed to meet his burden of proof in the proceeding.

On appeal, the applicant neglects to remedy the noted deficiencies in the letters from [REDACTED] and [REDACTED]. The applicant instead furnishes seven additional declarations from persons who claim to have personal knowledge of his presence in the United States at various points during the requisite period. These declarations contain the following chronological information:

- [REDACTED] attests that he first met the applicant in Gary, Indiana in August 1981. [REDACTED] claims he was employed with the applicant at job sites in construction in Gary, Indiana from 1981 until 1984.
- [REDACTED] attests that he contacted the applicant over the telephone during the applicant's residence in Gary, Indiana from 1981 until 1984 and Los Angeles, California from 1984 until 1988. [REDACTED] was residing in India during this time period.
- [REDACTED] attests that he first met the applicant at Los Angeles Airport in October 1984 when he picked him up in his taxicab. [REDACTED] claims that he kept in contact with the applicant during the applicant's residence in Los Angeles, California from 1984 until 1988 or 1989.
- [REDACTED] attests that he met the applicant in Los Angeles, California at the Vermont Sikh Temple in June 1985. [REDACTED] claims that he met the applicant at the temple on Sundays from June 1985 until May 1988.
- [REDACTED] attests that he first met the applicant in January 1986 at a Sikh Temple in Fresno, California. [REDACTED] claims that he knew the applicant between January 1986 and May 1986.
- [REDACTED] attests that he first met the applicant in June 1987 at the Vermont Sikh Temple in Los Angeles, California. [REDACTED] claims that he knew the applicant between June 1987 and May 1988.
- [REDACTED] attests that he first met the applicant in February 1987 in Los Angeles, California. [REDACTED] claims that he purchased shoes from the applicant between February 1987 and May 1988.

An applicant for temporary resident status has the burden of proving by a preponderance of the evidence that he has resided in the United States for the requisite periods. See 8 C.F.R. § 245a.2(d)(5). 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 application of the “preponderance of the evidence” standard may require an examination of each piece of relevant evidence and a determination as to whether such evidence, either by itself or when viewed within the totality of the evidence, establishes that something to be proved is probably true. *Matter of E-M-*, 20 I&N Dec. 77, 80 (Comm. 1989).

Pursuant to *Matter of E-M-*, evidence submitted under Section 245A of the Act includes the completed Form I-687, Application for Status as a Temporary Resident, and any documentary evidence to support and corroborate the information contained in the Form I-687. The applicant submitted an incomplete Form I-687 application. The applicant failed to provide on this application any information on his residence and employment in the United States. The applicant also neglected to provide any information on his affiliations or associations with any clubs, organizations, churches or businesses in the United States. Consequently, the applicant’s Form I-687 application is not probative evidence of his residence in the United States during the requisite period.

In determining the weight of a declaration, it should be examined first to determine upon what basis the author is making the statement and whether the statement is internally consistent, plausible, or even credible. Most important is whether the statement of the author is consistent with the other evidence in the record. *Matter of E-M-*, 20 I&N Dec. 77, 81. When viewing the supporting declarations within the totality of the evidence, they do not establish that the applicant’s claim is probably true. With an incomplete Form I-687 application, there is no other evidence in the record with which to assess the consistency, plausibility and credibility of the declarations. Despite the detailed information offered in the declarations, several fundamental questions regarding the applicant’s residences in Indiana and California remain unanswered. These questions include the applicant’s addresses, names of his employers, type of occupation(s), and dates of employment.

The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documentation that may be provided to establish proof of continuous residence in the United States during the requisite period. This list includes: past employment records; utility bills; school records; hospital or medical records; attestations by churches, unions or other organizations; money order receipts; passport entries; birth certificates of children; bank books; letters or correspondence involving the applicant; social security card; selective service card; automobile receipts and registration; deeds, mortgages or contracts; tax receipts; and insurance policies, receipts, or letters. The applicant failed to provide any of these documents in support of his claim of continuous residence in the United States during the requisite period. The submission of credible contemporaneous documentation could have bolstered the applicant’s claim, corroborated the supporting declarations, and given additional information on the applicant’s residence and employment during the requisite period. The applicant’s failure to

provide any other evidence to establish his continuous residence in the United States during the requisite period renders a finding that the applicant has failed to satisfy his burden of proof, as delineated in 8 C.F.R. § 245a.2(d)(5). The applicant has not submitted sufficient evidence to establish that his claim is “probably true” pursuant to *Matter of E-M-, supra*.

In conclusion, the absence of credible and probative 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 lack of credible supporting documentation, it is concluded that he 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.