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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-05-292-14014

Office: SEATTLE

Date: JUL 01 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: SELF-REPRESENTED

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, Seattle. 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 his claim of eligibility for temporary resident status and submits affidavits as evidence.

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).

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) 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. See 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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his or her burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on July 19, 2005. 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 his first address as Fresno, California, from October of 1981 to June of 1985; and [REDACTED], Bakersfield, California, from October of 1985 to June of 1993. Similarly, at part #33, he showed his first employment in the United States to be as a farmer in California from 1981 to 1994.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982, the applicant submitted the following attestations:

- A declaration from _____ in which he stated that the applicant lived with him at [REDACTED], in Bakersfield, California, from October of 1985 to June of 1993, and was paying \$75.00 per month in rent. Here, the declarant has failed to submit independent documentary evidence to substantiate his claim. He has failed to indicate how, when and where he met the applicant and how they came to live together. Because the declaration is lacking in detail, it can be afforded only minimal weight in establishing that the applicant resided in the United States during the requisite period.
- A declaration from _____ in which he stated that the applicant lived with him at [REDACTED] Fresno, California, from October of 1981 to June of 1985, and that the applicant helped him cook and clean. Here, the declarant has failed to indicate how, when and where he met the applicant and how they came to live together. Because the declaration is lacking in detail, it can

be afforded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

In response to the director's Notice of Intent to Deny (NOID), the applicant submitted the following attestations:

- An affidavit dated August 18, 2006 from [REDACTED] in which he stated that he was a priest at the Guru Ravi Dass Temple, Tukwila. He also stated that from 1981 to 1992 the applicant would visit the temple and perform social work there. The affiant's statement is inconsistent with the applicant's statement on his Form I-687 application, at part #31 where he was asked to list all affiliations or associations, clubs, organizations, churches, unions, or businesses, and the applicant did not list any. This inconsistency calls into question the affiant's ability to confirm that the applicant resided in the United States throughout the requisite period, as claimed. Because this attestation contains testimony that conflicts with what the applicant showed on his Form I-687 application, doubt is cast on assertions made in the attestation.
- An affidavit dated August 15, 2006 from [REDACTED] in which he stated that he and the applicant lived together from 1981 to 1985. He also stated that he and the applicant both moved to Bakersfield, California. Here, the affiant has failed to specify his place of residence from 1981 to 1985. He also failed to indicate how he met the applicant, and how they came to be living together. Because this affidavit is lacking in detail, it can be accorded little weight in establishing that the applicant resided in the United States during the requisite period.

In denying the application the director noted that the attestations submitted by the applicant were deficient in that the information provided was of the barest of statements and that the statements were similar in content. The director further noted that none of the declarants had provided supporting documentary evidence sufficient to lend credibility to their statements.

On appeal, the applicant reasserts his claim of eligibility for temporary resident status and submits the following attestations:

- An affidavit from [REDACTED] in which she states that she has known the applicant since December of 1981 and that she met him when he came to her house on Christmas Day with a friend. Here, the affiant fails to state the nature of their relationship or the frequency with which she saw and communicated with the applicant during the requisite period. The affiant has also failed to provide the applicant's places of residence in this country during the requisite period. Because the affidavit is significantly lacking in detail, it can be afforded only minimum weight in establishing that the applicant resided in the United States throughout the requisite period.
- An affidavit from [REDACTED] in which he states that he has known the applicant since November of 1981 when he met him at a wedding reception in Fresno, California, and that they have since met at community functions. Here, the affiant fails to state the nature of their relationship or the frequency with which she saw and communicated with the applicant during the requisite period.

The affiant has also failed to provide the applicant's places of residence in this country during the requisite period. Because the affidavit is lacking in detail, it can be afforded only minimum weight in establishing that the applicant resided in the United States throughout the requisite period.

- An affidavit from [REDACTED] in which he stated that he has known the applicant since 1983 when he met him at Gurduwara Sahib (Sikh Temple). Here, the affiant fails to specify the nature of their relationship or the frequency with which he saw and communicated with the applicant during the requisite period. The affiant also failed to provide the applicant's places of residence in this country during the requisite period. Because the affidavit is significantly lacking in detail, it can be afforded only minimum weight in establishing that the applicant resided in the United States throughout the requisite period.
- An affidavit dated November 15, 2006 from [REDACTED] in which he stated that he has known the applicant since 1983 when he met him at the Gurduwara Sahib in Yuba, California while attending a Sikh celebration. He also stated that since that time he has known the applicant very well. Here, the affiant fails to specify the nature of their relationship or the frequency with which he saw and communicated with the applicant during the requisite period. The affiant has failed to provide the applicant's places of residence in this country during the requisite period. Because the affidavit is significantly lacking in detail, it can be afforded only minimum weight in establishing that the applicant resided in the United States throughout the requisite period.
- An affidavit from [REDACTED] in which he stated that he has known the applicant since September of 1985 and that he met the applicant at the Gurudwara Sahib in Fresno, California. He also states that he and the applicant attend community functions together and that they have become good friends. The affiant has failed to provide the applicant's places of residence in this country during the requisite period or the frequency of contact. The affiant also failed to explain how he came to attend a Gurudwara in California in 1985 considering that he now resides in Mount Vernon, Washington. Because the affidavit is significantly lacking in detail, it can be afforded only minimum weight in establishing that the applicant resided in the United States throughout the requisite period.

In the instant case, the applicant has failed to provide sufficient, credible and probative evidence to establish his continuous unlawful residence in the United States since prior to January 1, 1982 and his continuous physical presence in the country during the requisite period. He has not submitted any evidence on appeal sufficient to overcome the director's denial. Furthermore, the affiant's statements conflict with statements made by the applicant and they are also lacking in detail. Therefore, the evidence submitted by the applicant can be accorded only minimal weight in establishing that he resided in the United States throughout the requisite period.

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 this 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 that are inconsistent with statements that he made on his Form I-687 application, and attestations that are lacking in detail, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States for the requisite period 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.