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U.S. Citizenship  
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Services

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[REDACTED]

FILE: [REDACTED]  
MSC-04-346-10022

Office: SEATTLE

Date: JUL 28 2008

IN RE: Applicant: [REDACTED]

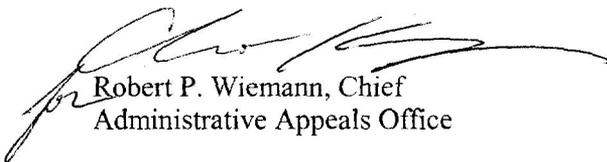
APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:

[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 District Director, Seattle. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because he found that the evidence submitted with the application was insufficient to establish eligibility for temporary resident status pursuant to the terms of the CSS/Newman settlement agreements. The director stated that the affidavits submitted by the applicant did not contain verifiable information. The director also noted discrepancies in the record. Specifically, the director noted that the record contained a Form G-325A Biographic Information submitted by the applicant in which he indicated that he was married in 1985 in India. However, the applicant had not listed a corresponding absence from the United States in 1985 on his Form I-687 application.

On appeal counsel states that the district director erred by not giving full weight to the evidence presented by the applicant and by making negative inferences from evidence which the applicant was not allowed to rebut. Counsel also states that the director's decision is contrary to the remedial provisions of the Immigration Reform and Control Act of 1986.

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) 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).

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 applicant 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 has not met his burden of proof.

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on September 10, 2004. The information contained in the Form I-687 application conflicts with other information contained in the record. Specifically, the record contains a translated copy of the birth certificate of the applicant’s son, [REDACTED], issued by the Chief Registrar of Punjab, Chandigarh. The applicant’s son was born on October 11, 1986. The birth certificate lists the parent’s address as “Village Manhuke.” This conflicts with the applicant’s claim to have resided continuously in the United States since 1981.

The information contained in the instant Form I-687 application also conflicts with information provided by the applicant in previously submitted Form I-687 applications. Part #32 of the Form I-687 application asked applicants to list all absences from the United States since January 1, 1982. On the instant Form I-687 application, the applicant listed three absences from the United States: March 1993 to April 1993; March 1995 to April 1995; and March 1996 to July 1996. However, the record contains two Form I-687 applications previously submitted by the applicant—one signed by the applicant on July 29, 1990 and the other signed by the applicant on August 2, 2001—in which he lists an additional absence from the United States from June 4, 1987 to June 24, 1987.

In addition, as noted by the director, the record contains a Form G-325A Biographic Information which the applicant filed along with a Form I-485 Application to Register Permanent Residence or Adjust Status in 2002. On the Form G-325A the applicant listed his date of marriage as 1985

and his place of marriage as India. The applicant has not listed an absence from the United States in 1985 on either the instant Form I-687 application or the previously submitted I-687 applications. This is a material inconsistency which detracts from the credibility of the applicant's claim.

The record contains the following documents submitted by the applicant to prove his residence in the United States throughout the requisite period:

- An affidavit from [REDACTED] dated March 7, 2002. The affiant states that he met the applicant in June of 1982 at a religious function. The affidavit lacks probative details regarding the affiant's relationship with the applicant such as the nature and frequency of the affiant's contact with the applicant. Lacking such relevant detail, the affidavit can be afforded only minimal weight as evidence of the applicant's residence in the United States during the requisite period.
- An affidavit from [REDACTED] Mahal dated February 1, 2002. The affiant states that he met the applicant in May of 1981 when they attended the same Sikh Temple. The record also contains an affidavit from [REDACTED] dated September 1, 2004 in which the affiant states that he met the applicant in May of 1981 at Elspranta Californiqa Sikh Temple and that he would meet the applicant nearly every Sunday at that temple. This is inconsistent with other information in the record. Specifically, the applicant indicated on his Form I-687 applications that his first period of residence in the United States began in June 1981 and November 1981. In addition, the record contains a Form for Determination of Class Membership in CSS v. Meese signed by the applicant on July 29, 1990 in which the applicant claims that he first entered the United States in June 1981. This is a material inconsistency which detracts from the credibility of these affidavits. Further, these affidavits lack probative details such as the nature and frequency of the affiant's contact with the applicant. Given these deficiencies, these affidavits will be given only minimal weight as evidence of the applicant's residence in the United States during the requisite period.
- An affidavit from [REDACTED] dated September 2, 2004. The affiant states that he brought the applicant to an Immigration and Naturalization Service (INS) office in August of 1987. The record also contains an earlier affidavit from [REDACTED] dated August 17, 1999 which contains essentially the same information. The affidavits only indicate that the applicant was present in the United States in August 1987.
- An affidavit from [REDACTED] dated August 24, 1990. The affiant states that he knows that the applicant resided at [REDACTED] California from June 1981 until June 1986. Although the dates and place of residence are consistent with information provided by the applicant on his Form I-687 application, the affidavit lacks details such as the circumstances under which the affiant came to know the applicant or how he dates his initial acquaintance with the applicant. Lacking such relevant detail, the

affidavit can be afforded only minimal weight as evidence of the applicant's residence in the United States during the requisite period.

- An affidavit from [REDACTED] dated August 18, 1990. The affiant states that the applicant and his wife stayed with the affiant from December 1988 through February 1989. The affiant also states that he was acquainted with the applicant in India because they were born in the same village in India. The record also contains an affidavit from [REDACTED] dated August 12, 1990 in which the affiant states that he has known the applicant since birth and that the applicant stayed with him in December 1988. The affiant does not claim to have personal knowledge of the applicant's residence during the requisite period, nor does the affiant provide details regarding the frequency or nature of his contact with the applicant during the requisite period. Given these deficiencies, the affidavit has little probative value and will be given minimal weight as evidence of the applicant's residence in the United States during the requisite period.
- An affidavit from [REDACTED] dated August 23, 1990. The affiant states that the applicant's wife came to the United States in November 1987; returned to India in January 1988; returned to the United States in November 1988 and then returned to India again. The affiant does not claim to have knowledge of the applicant's residence during the requisite period, nor does the affiant provide any details regarding the nature of his relationship with the applicant. Therefore, this affidavit is of no probative value.
- An affidavit from [REDACTED] which is notarized but not dated. The affiant, a resident of Canada, claims to have personal knowledge that the applicant has resided in the United States since 1981 and states that the applicant visited him in Canada from June 4, 1987 to June 24, 1987. The affiant does not explain the basis of his knowledge regarding the affiant's residence, other than to say that he and the applicant spoke on the telephone. The affiant also fails to provide details of his relationship with the applicant such as the nature and frequency of his contact with the applicant. In light of these deficiencies this affidavit has little probative value and will be given minimal weight as evidence of the applicant's residence in the United States during the requisite period.
- A statement from [REDACTED] signed and dated July 29, 1990. The declarant claims to have personal knowledge that the applicant traveled to Canada from June 4, 1987 to June 24, 1987. The declarant does not claim to have knowledge of the applicant's residence in the United States during the requisite period. Therefore, this affidavit will be given minimal weight as evidence of the applicant's residence in the United States during the requisite period.
- An affidavit from [REDACTED] dated July 31, 1990. The affiant states that he and the applicant were roommates at [REDACTED] December 1988 until "present." The affiant does not claim to have knowledge of the applicant's residence in the United States during the requisite period – the period that the affiant attests to began

after the requisite period. Therefore, this affidavit will be given no weight as evidence of the applicant's residence in the United States during the requisite period.

- Two affidavits from previous employers. The first is an affidavit from [REDACTED] dated July 31, 1990. The affiant states that the applicant worked for her as a housekeeper from December 1986 until December 1988. The affiant also states that she paid the applicant in cash and that she also paid the applicant's rent and utility expenses. The second is an affidavit from [REDACTED] dated July 31, 1990. The affiant, a farm labor contractor, states that the applicant worked for him as a farm laborer from November 1981 to June 1986. The affiant also states that he paid the applicant in cash and also paid the applicant's rent and utility expenses. These affidavits are deficient in that they do not comply with the regulation relating to past employment records. 8 C.F.R. § 245a.2(d)(3)(i). For example, the affidavits do not describe the applicant's job duties and do not state whether or not the information provided was taken from official company records. Even absent compliance with the regulation, the affidavits are considered "relevant document[s]" under 8 C.F.R. § 245a.2(d)(3)(iv)(L). *See, Matter of E-M- supra* at 81. However, the affidavits lack probative details and therefore have minimal weight as evidence of the applicant's residence in the United States during the requisite period.

The applicant also submitted a copy of an estimate from [REDACTED] & Body Shop, a copy of a letter purportedly sent to the applicant in the United States, and a receipt from [REDACTED] Charitable Trust. The estimate from [REDACTED] Paint & Body Shop bears the applicant's name and is dated October 18, 1986. The envelope is addressed to the applicant at [REDACTED]. Although the applicant claims that the letter bears a postmark dated 1981, this cannot be confirmed because the copy provided by the applicant is illegible. The record also contains a color copy of this envelope which was previously submitted by the applicant. However, the date of the post mark is illegible on the color copy as well. The receipt from the [REDACTED] Charitable Trust bears the applicant's name and is dated July 8, 1988. As this date falls outside the requisite period, it has no probative value as evidence of the applicant's residence in the United States during the requisite period.

In summary, the applicant has not provided sufficient evidence in support of his claim of residence in the United States relating to the entire requisite period. The absence of sufficiently detailed supporting 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 contradictory information in the record and the applicant's reliance upon documents with no or minimal probative value, 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.