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U.S. Citizenship
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[REDACTED]

FILE: [REDACTED] MSC 06 098 13870

Office: CHICAGO

Date: **JUL 30 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. 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

for 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 Field Office Director, Chicago, and 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, counsel asserts that the director failed to specify any basis for denying the application and argues that the applicant provided sufficient documentation in support of his claim, particularly when considered in light of the amount of time that has passed since the statutory period expired.

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 until the date of filing the application. 8 C.F.R. § 245a.2(b)(1).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and presence in accordance with the regulation at 8 C.F.R. § 245a.2(b), "until the date of filing" shall mean until the date the alien 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.* 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 during the requisite time period. Here, the applicant has failed to meet this burden.

The record shows that prior to filing the Form I-687 that is adjudicated in the present matter, the applicant had completed another Form I-687, dated July 11, 1990, and subsequently filed a Form I-485, dated March 14, 2002, seeking permanent resident status under the Legalization Immigration Family Unity (LIFE) Act. The record includes the following documentation in support of the applicant's claim of continuous residence in the United States during the relevant time period:

1. A letter dated September 8, 2003 from [REDACTED] president of the Sikh temple Gurdwara Yuba City, who stated that the applicant had been visiting the temple to participate in "special congregational programs" since January 1982. [REDACTED] stated that even after the applicant moved, he continued to serve in the temple's kitchen, preparing meals and performing various other services during festivals. It is noted, however, that Mr. [REDACTED] letter is not in compliance with the regulatory provisions cited in 8 C.F.R. § 245a.2(d)(3)(v), which require that any attestations by churches, unions, or other organizations include: the applicant's residential address during such membership, a statement explaining how the author of the letter knows the applicant, and the origin of the information being attested to. Additionally, the applicant did not claim membership or affiliation with any religious organizations in either of his Form I-687 applications, thereby establishing that there is an inconsistency between the applicant's claim and the statements of [REDACTED]. In light of the deficiencies described herein, this document lacks probative value and will be afforded only minimal weight in establishing the applicant's residence in the United States during the statutory period.

2. Four photocopied envelopes postmarked 1981, 1984, 1985, and 1987, respectively accompanied by letters written in a foreign language and unaccompanied by English language translations. Because the applicant failed to submit certified translations of the documents, the AAO cannot determine whether the evidence supports the applicant's claims. See 8 C.F.R. § 103.2(b)(3). Therefore, the contents of the letters cannot be accorded any weight in this proceeding. Additionally, the authenticity of these envelopes comes into question in light of the address included in the envelope postmarked March 16, 1987. This envelope shows the applicant's address as [REDACTED], California, which is inconsistent with the address provided by the applicant in each of his Form I-687 for the time period that includes 1987. Specifically, the applicant claimed that in 1987 he resided at [REDACTED]. In fact, the applicant's residential history during the statutory period does not include [REDACTED] Fresno, California. It is noted that doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). As the validity of at least one envelope is deemed to be suspect, the AAO also questions the validity of the three remaining envelopes, whose probative value is significantly diminished in light of the inconsistency cited herein.
3. An undated affidavit from [REDACTED], who stated that he had known the applicant since November 1984 in the capacity of a friend. Although the affiant claimed that the applicant is a successful businessman in the United States, he provided no details about the events and/or circumstances of the applicant's residence in the United States during any portion of the statutory period. As such, this affidavit will be afforded only minimal evidentiary weight in the proceeding.
4. A letter dated November 17, 2002 from [REDACTED] who claimed that the applicant first visited him in Munster, Indiana in 1987. [REDACTED] further stated that after the 1987 visit, the applicant moved to Indiana and joined the [REDACTED] Society congregation. This claim, however, is inconsistent with information provided by the applicant in his Form I-687 applications, neither of which indicates that the applicant was affiliated with any religious organizations. This inconsistency significantly detracts from the probative value of [REDACTED] letter, which also lacks any details about the applicant's residence in the United States during the statutory period. Accordingly, this letter will only be afforded minimal weight as evidence of the applicant's residence in the United States from 1987 through the remainder of the statutory period.
5. An undated affidavit from [REDACTED], who stated that he knew of the applicant's residence in the United States since February 1981. The affiant claimed that the applicant visited him for a two-week period in December 1981 and provided the three addresses where the applicant claimed to have resided during the statutory period. Although this affiant generally attested to the applicant's business acumen and his tendency to volunteer in philanthropic activities, he failed to provide any specific details about the events and/or

circumstances of the applicant's residence in the United States during the statutory period. This lack of relevant information detracts from the probative value of this affiant's claimed relationship with the applicant and therefore leads to doubt as to the affiant's personal knowledge of the applicant's residence in the United States during the relevant time period.

6. An affidavit dated July 3, 2003 from [REDACTED] who claimed that the applicant visited him in November 1987 and that during the applicant's visits, he was able to determine that the applicant was gracious, sophisticated, and devoted to the Sikh religion. The affiant failed to provide any details regarding the events and/or circumstances of the applicant's residence in the United States during the statutory period. As such, this document lacks probative value and does not establish that the applicant was residing in the United States in November 1987 and throughout the remainder of the statutory period.
7. A photocopied receipt dated June 10, 1984 showing \$21 paid by the applicant to the Sikh Religious Society. It is noted that the applicant has failed to provide the original receipt, thereby precluding Citizenship and Immigration Services from being able to evaluate this document's authenticity. Additionally, the signature of the individual who purportedly issued this receipt is illegible. As such, there is no way to ascertain whether the individual who signed the receipt was authorized to issue such documents. In light of these deficiencies, the probative value of this document is severely compromised, thereby precluding the AAO from relying upon this document to establish the applicant's presence in the United States as of the date shown on this receipt.
8. A photocopied letter dated November 21, 2003 from [REDACTED] who claimed that the applicant has been a patient in his practice since October 1987. It is noted that the doctor's phone number, which appears in the letterhead and is part of the stamp containing the doctor's name and office address, was altered, changing the area code from 312 to 773. It is unclear who made this alteration and why the unaltered version, if incorrect, appears as part of the letterhead. This unexplained alteration brings into question the validity of this document and, consequently, the statements made therein. Giving rise to further doubt the reliability of this letter is the fact that this alleged physician's office is located in the State of Illinois, which is a considerable distance from Fresno, California, where, according to No. 32 of the Form I-687, the applicant was residing throughout 1987. 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. *Id.* at 591-92. Due to the numerous unresolved anomalies discussed herein, this document will be afforded no weight as evidence of the applicant's residence in the United States from October 1987 through the remainder of the statutory period.
9. A letter dated May 17, 2005 from [REDACTED] who claimed that he had examined the applicant and diagnosed him with an ear infection, a second degree burn to the leg, and acute influenza and gastritis on April 19, 1982, May 8, 1986, and December

27, 1988, respectively. It is noted that, while [REDACTED] statements may place the applicant in the United States on each of the respective dates of treatment, they do not establish that the applicant continuously resided in the United States during the statutory period. As such, the probative value of this document is limited to the specific time periods accounted for by [REDACTED]

10. An affidavit dated May 10, 2005 from [REDACTED] who claimed that he knew the applicant "from 1981-1982" and attested to the applicant's employment as a dishwasher from 1986 to 1987 at [REDACTED]. The affiant stated that he learned of the applicant's good work ethic based on meeting with the applicant twice a week. These statements, however, are confusing and fail to establish how the affiant could know of the applicant's employment in 1986 and 1987 if he only claimed to know the applicant "from 1981-1982." While it is plausible that the affiant's statement was meant to establish that he first encountered the applicant during the 1981-1982 time period, it is unclear whether the affiant's first encounter with the applicant was prior or subsequent to the commencement of the statutory period. The affiant also failed to explain where his weekly meetings with the applicant took place. Lastly, the applicant claimed that he worked at the Maharaja Restaurant from January 1986 until March 1988, which is inconsistent with this affiant's claim that the applicant worked there from 1986 to 1987. The confusing and inconsistent statements of the affiant detract from the probative value of this affidavit. As such, this document will only be given minimal weight as evidence of the applicant's residence in the United States throughout the statutory period.
11. An affidavit dated May 11, 2005 from [REDACTED] who claimed to have known the applicant since 1981 at the address listed in the applicant's Forms I-687. The affiant claimed that he owned a grocery store where the applicant made purchases and spent time talking to the affiant. The affiant claimed that the applicant moved to Fresno, California in 1986 and subsequently started working at an Indian restaurant called Maharaja where the affiant came to eat. Lastly, the affiant claimed that he used to meet the applicant at a Sikh Temple in Caruthers, California where the applicant attended religious ceremonies every Sunday. It is noted that the affiant's last statement is inconsistent with the information provided by the applicant in either of his Form I-687 applications, where, as previously discussed, the applicant made no mention of any affiliations with or memberships in religious organizations. In light of this inconsistency, the validity of the remainder of this affiant's statements is also called into question and will only be afforded minimal weight as evidence of the applicant's residence in the United States during the statutory period.

On September 27, 2007, the director denied the application, concluding that the applicant failed to provide credible evidence in support of his claim that he resided in the United States during the entire statutory period.

On appeal, counsel refers to a letter from India and a letter from a physician (discussed in No. 9 above), asserting that such documents are unlikely to be fraudulent because of the difficulty of fabricating a post

office stamp and because of the unlikelihood that a medical doctor would jeopardize his career by making false statements. However, as discussed above, the applicant has submitted a number of other documents whose lack of validity brings into question all of the evidence submitted by this applicant. Furthermore, counsel offers no evidence as to the ease or difficulty of fabricating a letter with an invalid post office stamp. In fact, the AAO has come across a number of similar documents, some from India, where the post marks have been discovered to be fraudulent. As such, the AAO cannot assume that the postmarked envelopes submitted by the applicant are authentic merely based on counsel's speculation that the postmark stamps may be difficult to fabricate. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Similarly, with regard to counsel's assertion that a licensed physician would not risk his career by making false statements, the AAO cannot make such an assumption, particularly in light of the applicant's submission of another letter from a purported physician, whose statements the AAO finds suspect in light of the unexplained alteration and possibly invalid letterhead upon which the statements were made.

Counsel also refers to a number of affidavits the applicant submitted as secondary evidence of his claimed continuous residence during the statutory period. However, as discussed above at length, the affidavits were deficient in their content and/or lacked credibility. As such, the secondary evidence submitted by the applicant was afforded little to no probative value.

In summary, the applicant has not provided sufficient credible evidence to establish his unlawful residence in the United States throughout the statutory period and has compromised the validity of his claim by submitting documentation that is inconsistent with statements made by him in his Form I-687 applications. The absence of sufficiently credible supporting documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of this claim. As previously stated, 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). Given the applicant's reliance upon documents with minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through the date he attempted to file a Form I-687 application as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E-M-*, 20 I&N Dec. 77. 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.