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U.S. Citizenship
and Immigration
Services

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[REDACTED]

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FILE: [REDACTED]
MSC-06-027-11640

Office: SAN FRANCISCO

Date: **MAY 23 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 Records 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, San Francisco. 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. The director identified inconsistencies between the applicant's claim for temporary resident status and his prior claim for asylum.

It is noted that the director appears to have erroneously stated that the applicant failed to appear for a scheduled interview. The director's error is harmless because the AAO conducts a *de novo* review, evaluating the sufficiency of the evidence in the record according to its probative value and credibility as required by the regulation at 8 C.F.R. § 245a.2(d)(6). The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

On appeal, the applicant stated that he appeared for the scheduled interview, he provided documents to demonstrate that he resided in the United States, and the affidavits are properly attested to under penalty of perjury. The applicant also asked that the errors in the decision be corrected. Lastly, the applicant attempted to explain inconsistencies between his asylum application and his application for temporary resident status.

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. 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 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 October 27, 2005. At part #30 of the Form I-687

where applicants were asked to list all residences in the United States since first entry, the applicant listed only the following address during the requisite period: [REDACTED] Santa Clara, California from May 1981 to August 1987. It is noted that the next address listed by the applicant is [REDACTED] Turlock, California from June 1994 to December 1994. At part #31 where applicants were asked to list all affiliations or associations with clubs, organizations, churches, unions, businesses, et cetera, the applicant listed two Sikh temples, one in San Jose, California and one in Fremont, California, from May 1981 to present. At part #32 where applicants were asked to list all absences from the United States since entry, the applicant listed only the following absences: a trip to Canada to attend a festival during June 1985; and a trip to India to live there from July 1987 to April 1994. It is noted that the trip to India appears to have been handwritten on the Form I-687 by an immigration officer at the applicant's instruction. At part #33 where applicants were asked to list all employment in the United States since entry, the applicant indicated only that he was self-employed selling flowers on [REDACTED] Santa Clara, California from June 1981 to June 1987. It is noted that the Form I-687 initially indicated that the applicant's dates of self-employment selling flowers in Santa Clara were from June 1981 to June 1994. The date "June 1994" appears to have been changed to read "June 1987" by an immigration officer at the applicant's instruction.

The record indicates that the applicant submitted a Request for Asylum in the United States (Form I-589) on July 13, 1994. At part #12 where applicants were asked for information about their arrival in the United States, the applicant indicated that he arrived in the United States on May 18, 1994 in Brownsville, Texas. At part #24 where applicants were asked whether they had traveled to the United States before, the applicant indicated "No." This statement conflicts directly with the applicant's claim to have resided in the United States throughout the requisite period. As a result, it casts serious doubt on the applicant's claim to meet the residency requirements for temporary resident status.

The record indicates that the applicant was interviewed by an asylum officer on July 29, 1998. CIS records indicate that the applicant actively stated that he supported the organizations AISSF ([REDACTED]) and [REDACTED] from 1985 until 1994. The applicant indicated that, due to his political activities, he was stopped and detained numerous times by the police in India. The asylum officer found the applicant's statements regarding the AISSF and Akali Dal parties to be not credible. Specifically, the officer noted that the applicant was unable to describe the organization, structure, or history of the groups. The applicant was also unable to identify the groups' leaders at key periods during his purported support.

With his Form I-589 application, the applicant submitted a Biographic Information Form G-325A (Form G-325A), which he signed on July 3, 1994 under severe penalties for knowingly and willfully falsifying or concealing a material fact. Where the applicant was asked to list his residence for the last five years, the applicant indicated that he resided at an address in Punjab, India from July 1962, the year of his birth, until May 1994. Where the applicant was asked to list his last address outside the United States of more than one year, the applicant indicated again that he resided at an address in Punjab, India from July 1962 until May 1994. Where the applicant was asked to list his

employment for the last five years, the applicant indicated only that he was a self-employed farmer from July 1962 to May 1994 and an unemployed farmer from May 1994 to the present time. All these statements conflict with the applicant's statements on his Form I-687 indicating that he began residing in the United States in May 1981 and resided in the United States throughout the requisite period. These inconsistencies cast serious doubt on the applicant's claim to have resided in the United States throughout the requisite period.

The record includes a transcript from an oral decision and order of an immigration judge in San Francisco, California on September 7, 2001, related to the applicant's removal proceedings. In his decision, the judge stated that the applicant made substantial corrections to his Form I-589 at the time of the hearing. The judge indicated that when the applicant was asked why he delayed several years to submit an amended and corrected application, the applicant stated that his attorneys told him that he could make corrections on the day of the hearing. The judge found this explanation to be implausible and in bad judgment. The judge noted that the applicant's counsel in 2001 had represented the applicant since 1998. The judge stated that the applicant testified in court that he was a supporter of "Akaldal [sic] Mann" and AISSF since 1989, yet the applicant had told the asylum officer that he was a supporter since 1985. The judge indicated that the applicant had denied this inconsistency, despite its appearance in the record. The applicant's failure to explain the inconsistencies between the statements in his Form I-589 and his Form I-687 in immigration court when confronted with these inconsistencies casts further doubt on the applicant's claim to have resided continuously in the United States throughout the requisite period.

The record indicates the applicant was found excludable from the United States pursuant to Section 212(a)(7)(A)(i)(I) of the Act on June 4, 1993 by an immigration judge in San Pedro, California. The applicant's departure was verified from Los Angeles International Airport on June 22, 1993. This information contradicts the applicant's claim in his temporary residence interview to have been absent from the United States on a trip to India between July 1987 and April 1994. This inconsistency casts some doubt on the applicant's statements regarding his absences from the United States and, as a result, calls into question his claim to have resided continuously in the United States during the requisite period.

In an attempt to establish continuous unlawful residence in this country since prior to January 1, 1982 and throughout the requisite period, the applicant provided four attestations. The notarized declaration from [REDACTED] dated December 15, 2005 states that the declarant met the applicant in July 1985 at [REDACTED] in Fremont, California. The declaration states that the applicant told the declarant that he came to the United States in May 1981. The declarant stated that he saw the applicant "quite often" during in the Gurdwara during Sunday prayers and on other religious occasions between July 1985 and when the applicant left for India in July 1987. The affiant also stated that he is aware that the applicant returned to India in 1987 and stayed there until 1994, when he returned to the United States. This information is inconsistent with the record of the applicant's departure from the United States at Los Angeles International Airport on June 22, 1993. This inconsistency casts some doubt on the affiant's knowledge of the applicant's activities and, as a result, on his ability to confirm that the applicant resided in the United States

during the requisite period. At most, this affidavit constitutes some evidence that the applicant resided in the United States from July 1985 to July 1987.

The applicant provided a notarized declaration from [REDACTED] dated December 17, 2005. The declarant stated that he met the applicant in August 1981 at the [REDACTED] in Fremont, California. The declarant stated that he met the applicant many times in the [REDACTED]. This declaration fails to state that the applicant resided in the United States during the requisite period. In addition, the declaration fails to provide detail regarding the declarant's frequency of contact with the applicant and any absences from the United States during the requisite period. As a result, this declaration is found to lack sufficient detail to confirm that the applicant resided in the United States during the requisite period.

The applicant provided a notarized form declaration from [REDACTED]. The declarant stated that she met the applicant on February 13, 1987 at Kmart Shopping Center. The declarant stated that she met the applicant because she would buy flowers from the applicant. Where the form asked the declarant to indicate how she knew that the applicant came to the United States before January 1, 1982, the applicant stated, "[The applicant] told me when he came to America." This declaration indicates that the declarant only had personal knowledge of the applicant's residence in the United States since February 1987. In addition, the declaration lacks detail regarding the declarant's frequency of contact with the applicant and the region where the applicant resided during the requisite period. As a result, this declaration is found to lack sufficient detail to confirm the applicant's residence in the United States from February 1987 until the end of the requisite period.

The applicant also provided a form affidavit from [REDACTED]. The affiant stated that he met the applicant in August 1981 at Kmart Shopping Center, when the applicant used to sell bouquets of flowers and the affiant would purchase them. When asked on the form to describe all his contacts with the applicant between January 1, 1982 and 1988, the affiant stated that he bought flowers from the applicant once or twice a month but he would see the applicant every day. This affidavit fails to include detail regarding the region where the applicant resided during the requisite period, any absences from the United States during the requisite period, and the nature of the affiant's daily contact with the applicant. As a result, this affidavit is found to lack sufficient detail to confirm that the applicant resided in the United States during the requisite period.

In denying the application the director noted 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 identified inconsistencies between the applicant's claim for temporary resident status and his prior claim for asylum. Specifically, the director stated that the applicant had indicated during his asylum interview that he was a member of AISSF (Manjit) and Akali Dal (Mann) from 1985 to 1994. The director found this statement to be inconsistent with the applicant's statements during his temporary residence interview where he stated that he was in Santa Clara during the same period. The director also analyzed the credibility and probative value of attestations submitted by the applicant.

It is noted that the director erroneously stated that the applicant indicated that he first entered the United States on May 18, 1991, rather than stating that the applicant indicated that he entered the United States on May 18, 1994. As indicated above, this error is harmless because the AAO conducts a de novo review, evaluating the sufficiency of the evidence in the record according to its probative value and credibility as required by the regulation at 8 C.F.R. § 245a.2(d)(6).

On appeal, the applicant stated that he appeared for the scheduled interview, he provided documents to demonstrate that he resided in the United States, and the affidavits are properly attested to under penalty of perjury. The applicant also asked that the errors in the decision be corrected. The applicant provided two additional attestations from [REDACTED] and [REDACTED].

The affidavit from [REDACTED] dated October 11, 2006 states that the affiant met the applicant in July 1985 at [REDACTED] in Fremont, California. The affiant stated that, since they met, he and the applicant have visited each other's home occasionally. The affiant stated that the applicant mentioned that he had entered the United States in May 1981; and that the applicant was with the affiant in the United States on April 24, 1986 and in July 1987 before the applicant returned to India. The affiant also indicated that the applicant was present at the affiant's wedding party on September 15, 1985, yet the affiant failed to indicate whether the wedding party took place in the United States. The affiant stated that he is aware that the applicant returned to India in 1987 and stayed there until 1994, when he returned to the United States. This information is inconsistent with the record of the applicant's departure from the United States at Los Angeles International Airport on June 22, 1993. This inconsistency casts some doubt on the affiant's knowledge of the applicant's activities and, as a result, on his ability to confirm that the applicant resided in the United States during the requisite period. At most, this affidavit constitutes some evidence that the applicant resided in the United States from July 1985 to July 1987.

The applicant also provided an affidavit from [REDACTED] dated October 12, 2006. The affiant stated that he met the applicant in August 1981 in the Langar Hall of [REDACTED] in Fremont, California. After their first meeting, the affiant and the applicant became good friends, visited each other's home, and met at the [REDACTED] Sunday prayers. The affiant also indicated that, at that time, the applicant resided at the [REDACTED] 2 address. This affidavit fails to state that the applicant resided in the United States during the requisite period, other than during August 1981. In addition, the affidavit fails to provide detail regarding the affiant's frequency of contact with the applicant and any absences from the United States during the requisite period. As a result, this declaration is found to lack sufficient detail to confirm that the applicant resided in the United States during the requisite period.

Finally, the applicant attempted to explain the inconsistency identified by the director between the applicant's claim of eligibility for asylum and his claim of eligibility for temporary resident status. The applicant stated that he supported the AISSF and Akali Dal parties from India and continued

supporting them from the United States as well. The applicant provided a copy of his Certificate of Life Membership of the Lok Bhalai Party dated October 10, 2003, in an attempt to demonstrate that an individual can be a supporter of a party regardless of the country in which the individual lives. This explanation fails to overcome the inconsistency identified by the director. Specifically, the record of the applicant's deportation hearing indicates that the applicant denied having stated to the asylum officer that he was a supporter of Akali Dal (Mann) and AISSF since 1985. On appeal, the applicant now indicates that he supported these organizations from the United States during the requisite period. During the hearing, the applicant attempted to explain the inconsistency by indicating that the asylum officer had erred in recording his statements. The applicant now offers a contradictory explanation of the inconsistency, based on the idea that he was supporting the organizations since 1985 but happened to support them from the United States. The original inconsistency between the two applications; the applicant's contradictory attempts to explain the inconsistency; his indication on his Form I-589 that he never entered the United States prior to May 18, 1994; and his indication on his Form G-325A that he resided in India until May 1994 all cast serious doubt on the applicant's claim to have resided in the United States throughout the requisite period.

In summary, the applicant has submitted attestations from four individuals. The attestations from [REDACTED] are inconsistent with CIS records and, at most, confirm the applicant's residence in the United States between July 1985 and July 1987. The attestations from [REDACTED] and [REDACTED] lack sufficient detail to confirm that the applicant resided in the United States during the 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 applicant's contradictory statements on his applications and his 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 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.