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U.S. Citizenship  
and Immigration  
Services

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FILE:

MSC-05-256-13191

Office: SACRAMENTO

Date: **NOV 14 2008**

IN RE:

Applicant:

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:

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 "John F. Grissom".

John F. Grissom, Acting 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, Sacramento. 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 denied the application after determining 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 noted the inconsistencies in the applicant's statements pertaining to his presence in, and absences from the United States. The director also noted the minimum probative value of the affidavits submitted by [REDACTED] and [REDACTED]. The director denied the application, finding that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, counsel asserts that the statements made by [REDACTED] coupled with those made by [REDACTED] in their affidavits are sufficient to support the applicant's claim of continuous unlawful residence in the United States during the requisite period. Counsel submits no evidence on appeal.

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 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 June 13, 2005.

The applicant submitted the following attestations:

- An affidavit dated May 29, 1990 from [REDACTED] in which he stated that he met the applicant through friends in 1981. The affiant also stated that the applicant has been taking care of his yard since 1981, every third Saturday of the month, to the present and that the applicant is paid in cash. Here, the statement is inconsistent with the applicant’s statements on his previously filed Form I-687 application at part #36, dated May 28, 1990, that he was employed by the affiant from 1989 to the present. The applicant does not list this employment on the current Form I-687. This inconsistency calls into

question the credibility of the affiant's statement. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). It is noted that the affiant fails to identify the friends who introduced him to the applicant. It is also noted that the affiant fails to indicate the applicant's place of residence during the requisite period. In addition, the affidavit does not conform to regulatory standards for attestations by employers. Specifically, the letter does not specify the address(es) where the applicant resided throughout the claimed employment period. 8 C.F.R. § 245a.2(d)(3)(i). Here, the affiant fails to indicate whether the employment information was taken from company records. Neither has the availability of the records for inspection been clarified. 8 C.F.R. § 245a.2(d)(3)(i). The record does not contain copies of personnel records or time cards that pertain to the requisite period to corroborate the assertions made by the affiant. Because this affidavit fails to comply with regulatory standards and is inconsistent with the statements made by the applicant and because it is lacking in detail, it can be afforded only minimal weight in establishing the applicant's residence in the United States during the requisite period.

- A fill-in-the-blank affidavit dated May 25, 1990 from [REDACTED] in which he indicated that the applicant resided at [REDACTED] in Hollywood, California from August of 1981 to June of 1988, and at [REDACTED] in Agoura, California from June of 1989 to May of 1990. Here, the affiant fails to specify when and under what conditions he met the applicant. He also fails to specify the frequency with which he saw and communicated with the applicant during the requisite period. He further fails to demonstrate that the applicant's address information is based upon his personal firsthand knowledge of the applicant's whereabouts and circumstances. Because the affidavit is lacking in detail, it can be afforded little weight in establishing the applicant's residence in the United States during the requisite period. Mr. [REDACTED] submitted a second affidavit with the same date in which he states that the applicant went to Mexico in January of 1988 and returned to the United States in February of 1988. This absence is not listed on the applicant's current I-687. Because the affiant's statements are inconsistent with the applicant's, they will not be considered.
- An affidavit dated March 24, 2006 from [REDACTED] in which he stated that he met the applicant in October of 1981 at [REDACTED]'s residence. He further stated that he met the applicant a few times during different occasions at [REDACTED]'s residence. Here, the affiant fails to indicate that he saw and communicated with the applicant on a regular basis during the requisite period. He also fails to indicate any knowledge of the applicant's place of residence in the United States during that period. Because the affidavit is lacking in detail, it can be afforded only minimal weight in establishing the applicant's residence in the United States during the requisite period.

- An affidavit dated March 19, 2006 from [REDACTED] in which he stated that he has known the applicant since November of 1981 and that he met him at the Sikh Gurdwara of Los Angeles. He further stated that he would travel to Los Angeles to participate in the Sikh celebrations where he would meet the applicant. He also stated that the applicant was a seasonal worker at his farm in Fresno, California from 1984 to 1985. The affiant's statement is inconsistent with statements made by the applicant on his current I-687 application at part #33 where he indicated his first employment in the United States was for Hamilton Gas Station from March of 2003 to September of 2003.<sup>1</sup> *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). It is further noted that the affidavit does not conform to regulatory standards for attestations by employers. Specifically, the declarant does not specify the address(es) where the applicant resided throughout the claimed employment period. The affiant fails to indicate the number of hours or days the applicant worked. 8 C.F.R. § 245a.2(d)(3)(i). Because this declaration does not conform to regulatory standards, it can be accorded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

In denying the application, the director determined that the applicant had failed to prove his eligibility for temporary residence status. The director noted the inconsistencies in the applicant's statements on his current I-687 application and his sworn statement to immigration officers during his interview on March 1, 2006 concerning his presence in and absence from the United States. The director also noted that counsel for the applicant had failed to directly address the applicant's failure to list his 1989 absence from the United States and his 1990 return on his previously submitted and current I-687 applications.<sup>2</sup>

The director further noted that [REDACTED] testimony, taken as a whole, was not sufficiently credible or adequate to overcome the doubt created by the inconsistencies in the applicant's testimony. The director noted that [REDACTED]'s testimony was insufficient to demonstrate that the applicant continuously resided in the United States throughout the requisite period.

On appeal, counsel states that both [REDACTED] and [REDACTED]'s testimony are credible and therefore are sufficient to establish the applicant presence in the United States during the requisite period. No evidence is submitted on appeal. Although counsel claims that the two affiants' testimony is sufficient to demonstrate the applicant's presence in the United States during the requisite period, the evidence of record is not sufficient to substantiate such claim. Neither of these affidavits give enough detail to lend credence to the truth of their assertions. The evidence is not sufficient to establish the applicant's claim of continuous unlawful residence in the

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<sup>1</sup> The AAO also notes that although the affiant claims to have employed the applicant on his farm in Fresno, California from 1984 to 1985, he indicated in the affidavit that he was employed by [REDACTED] on 7<sup>th</sup> Street in Berkeley, California from 1981 to May of 1988.

<sup>2</sup> The AAO also notes another inconsistency between his sworn statement, where he states he visited his parents in Mexico in 1988, and his previously filed I-687, where he stated that he returned to India at this time.

and [REDACTED] are lacking in detail sufficient to substantiate the applicant's claims, and that their declarations are inconsistent with statements made by the applicant. It is also noted by the AAO that the applicant has failed to address the credibility issues raised by the director concerning his absences from the United States.

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 throughout the requisite period. The applicant has failed to overcome the director's basis for denial. The applicant has failed to submit any objective evidence to explain or justify the apparent inconsistencies and contradictions found in the record.

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 evidence that have little probative value, and given the inconsistencies and contradictions found in his statements, it is concluded that the applicant 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.