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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:



MSC-05-155-10647

Office: NEW YORK

Date:

OCT 31 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:

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, New York. 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 that he resided continuously in the United States from September 1981 to May 4, 1988. The applicant states that “in 1986-87” he approached an Immigration and Naturalization Service office to submit his Form I-687, but it was not accepted. The applicant states that from 1981 to May 4, 1988 he was physically continuously present in the United States and no absence during that period was for more than 30 days. The applicant states that he maintained his residence in the United States. The applicant states that he had no departure from the United States based on an order of deportation.

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 March 4, 2005. At part #30 of the Form I-687 application where applicants are asked to list all residences in the United States since first entry, the applicant showed that during the requisite period he resided in El Centro, California from September 1981 to May 1985 and Calexico, California from August 1985 to April 1988. At part #33, he showed that during the requisite period he was employed with [REDACTED] Farm Labor Contractor in Borrego Springs, California from October 1981 to September 1984 and [REDACTED] in Calexico, California from September 1984 to March 1988.

The applicant submitted the following documentation:

- An affidavit from [REDACTED], dated November 2, 2005. Mr. [REDACTED] states in his affidavit that he is a United States citizen and currently resides in Jamaica, New York. He states that he has known the applicant as a friend since 1981. This affidavit fails to convey how and where Mr. [REDACTED] first became acquainted with the applicant. It also does not indicate how Mr. [REDACTED] dated their initial acquaintance. Furthermore, it fails to illustrate the frequency of Mr. [REDACTED]'s contact with the applicant in the United States during the requisite period. Given these deficiencies, this affidavit is without any probative value as evidence of the applicant's residence in the United States during the requisite period.
- An affidavit from [REDACTED] dated November 4, 2005. Ms. [REDACTED] states in her affidavit that she is a United States citizen and resides in New York. She states that she has known the applicant as a friend since 1981. This affidavit fails to convey how and where [REDACTED] first became acquainted with the applicant. It also does not indicate how [REDACTED] dated their initial acquaintance. Furthermore, it fails to illustrate the frequency of [REDACTED]'s contact with the applicant in the United States during the requisite period. Given these deficiencies, this affidavit is without any probative value as evidence of the applicant's residence in the United States during the requisite period.
- A letter from [REDACTED] Priest of The Sikh Cultural Society, Inc., located in Richmond Hill, New York. Mr. [REDACTED] states in his letter, dated November 6, 2005, that the applicant is a regular member of the congregation and comes to the Gurudwara regularly. He states that the applicant participates in community activities and does community service. This letter fails to indicate the date that the applicant first became involved in The Sikh Cultural Society. The regulation at 8 C.F.R. § 245a.2(d)(3)(v) states that attestations from religious organizations should show the applicant's dates of membership; the address(es) where the applicant resided during the membership period; establish how the author knows the applicant; and establish the origin of the information being attested to. This letter fails to comply with these delineated guidelines. Furthermore, at part #31 of the Form I-687 where applicants are asked to provide their membership or association with any religious organizations, the applicant responded "None." Given these deficiencies, this letter is without any probative value as evidence of the applicant's residence in the United States during the requisite period.

On January 26, 2006, the director issued a Notice of Intent to Deny (NOID) to the applicant. The director determined that the affidavits the applicant furnished appear to be neither credible nor amenable to verification. The director stated that the affidavit from [REDACTED] does not include proof that he was present in the United States during the requisite period and proof of his direct personal knowledge of the events he has attested to. The director determined that the applicant failed to submit credible documentation that would constitute by a preponderance of the evidence his residence in the United States during the requisite period. The director concluded that the applicant failed to meet his burden of proof in the proceeding.

In rebuttal to the NOID, the applicant asserts that he has continuously resided in the United States for the requisite period. The applicant states that during the requisite period he has not had a single absence from the United States that exceeds 45 days. The applicant states that during the period of May 5, 1987 to May 4, 1988, he visited an Immigration and Naturalization Service office to apply for legalization, but his Form I-687 was not accepted. The applicant states that he was continuously physically present in the United States since November 6, 1986 through May 4, 1988 except for a less than 30 day absence during the period from December 1986 to January 1987. The applicant states that since his Form I-687 was not accepted, he was not issued work authorization and a Social Security Number. The applicant indicates that for this reason he worked in an "unlawful condition" and was unable to "deposit I Tax."

The applicant submitted in rebuttal to the NOID copies of: his Social Security Card; his 2002, 2003 and 2004 United States Income Tax Returns; his paycheck stubs for December 2005 through January 2006; and his Matriculation Certificate from India. Since none of these documents relate to the applicant's residence in the United States during the requisite period, they are not relevant to this proceeding.

On February 21, 2006, the director issued a Notice of Decision to deny the application. The director determined that the information and documentation the applicant submitted in rebuttal to the NOID were insufficient to overcome the grounds for denial. The director determined that none of the documentation the applicant furnished in response to the NOID was relevant in determining his eligibility for temporary resident status. The director concluded that the applicant failed to meet his burden of proof in the proceeding.

On appeal, the applicant asserts that he resided continuously in the United States from September 1981 to May 4, 1988. The applicant states that "in 1986-87" he approached an Immigration and Naturalization Service office to submit his Form I-687, but it was not accepted. The applicant states that from 1981 to May 4, 1988 he was physically continuously present in the United States and no absence during that period was for more than 30 days. The applicant states that he maintained his residence in the United States. The applicant states that he had no departure from the United States based on an order of deportation.

The applicant submits as additional corroborating evidence:

- An undated affidavit from [REDACTED] Ms. [REDACTED] states in her affidavit that she is a United States citizen and currently resides in Richmond Hill, New York. She states that she has known the applicant as a close friend since 1981. She states that she has knowledge of the applicant's continuous physical presence in the United States from 1981 through May 4, 1988. This affidavit fails to convey how and where [REDACTED] first became acquainted with the applicant. It also does not indicate how [REDACTED] dated their initial acquaintance. Furthermore, it fails to illustrate the frequency of [REDACTED]'s contact with the applicant in the United States during the requisite period. Given these deficiencies, this affidavit is

without any probative value as evidence of the applicant's residence in the United States during the requisite period.

- An affidavit, dated March 9, 2006, from [REDACTED]. Mr. [REDACTED] states in his affidavit that he is a United States citizen and currently resides in Richmond Hill, New York. He states that he has known the applicant as a close friend since 1986. He states that he has knowledge of the applicant's continuous physical presence in the United States from 1986 through May 4, 1988. This affidavit fails to convey how and where Mr. [REDACTED] first became acquainted with the applicant. It also does not indicate how Mr. [REDACTED] dated their initial acquaintance. Furthermore, it fails to illustrate the frequency of Mr. [REDACTED] contact with the applicant in the United States during the requisite period. Given these deficiencies, this affidavit is without any probative value as evidence of the applicant's residence in the United States during the requisite period.

In summary, the applicant has failed to provide credible, reliable and probative evidence of his residence in the United States during the requisite period. The applicant has not provided sufficient evidence to establish that he entered the United States prior to January 1, 1982. Nor has he provided sufficient evidence to establish that he has resided in the United States during the requisite period. The applicant has been given the opportunity to satisfy his burden of proof with a broad range of evidence. *See* 8 C.F.R. § 245a.2(d)(3). The applicant submitted as evidence of his residence in the United States during the requisite period, four affidavits and a letter from The Sikh Cultural Society, Inc. The four affidavits lack considerable detail on the affiants' relationship with the applicant in the United States during the requisite period. As such, they are without any probative value as corroborating evidence. The letter from The Sikh Cultural Society fails to establish that the applicant was involved with the organization during the requisite period. Accordingly, it is also without any probative value as corroborating evidence. Pursuant to 8 C.F.R. § 245a.2(d)(6), the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. Since the applicant's documentation is without any probative value, he has not furnished sufficient evidence to meet his burden of proof in this proceeding.

In this case, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of his 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 lack of credible supporting documentation, it is concluded that he has failed to establish by a preponderance of the evidence that he has continuously resided in an unlawful status in the United States for the requisite period as required 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.