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FILE: [REDACTED]  
MSC-06-097-17159

Office: NEWARK

Date: **SEP 04 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.

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, Newark. 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, counsel asserts that the applicant did respond to the director's Notice of Intent to Deny (NOID), and that he has submitted attestations that are sufficient to establish the applicant's eligibility 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. 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 January 5, 2006.

The applicant submitted the following attestations as evidence:

- A letter dated November 10, 2002 from [REDACTED] chairman of the Sikh Cultural Society, Inc. in which he stated that he has known the applicant since 1986 when he came to know him through the Society while performing various volunteer services. Here, the declarant fails to specify the frequency with which he saw and communicated with the applicant, or any other detail that would lend credence to his claimed knowledge of the applicant and the applicant’s residence in the United States during the requisite period. Because the declaration is significantly lacking in detail, it can be afforded only minimal weight in establishing that the applicant resided in the United States during the requisite period.
- An affidavit from [REDACTED] in which he stated that the applicant resided at [REDACTED], Jackson Heights, New York, from 1984 to 1990. He also stated that he and the applicant are good friends and that they normally meet at family gatherings. Here, the affiant fails to specify under what circumstances he met the applicant, the frequency with which he saw the applicant, or any other detail that would lend credence to his claimed knowledge of the applicant and his residence in the United States during the requisite period. Because the affidavit is significantly lacking in detail, it can be afforded only minimal weight in establishing that the applicant resided in the United States during the requisite period.

- An affidavit from [REDACTED] in which he stated that he has known the applicant since 1984 when they met at the New York Gurudwara (Sikh Temple). He also stated that he and the applicant meet each other on the weekends at the Sikh Temple. He further stated that they have developed a friendship and that they contact each other by phone and at family gatherings. Here, the declaration is inconsistent with what the applicant stated on his Form I-687 application at part #31 where he didn't list any affiliations or associations with any organizations or church groups. This inconsistency calls into question the credibility of the affiant's statement. Because the affidavit is inconsistent with statements made by the applicant on his Form I-687 application, it can be afforded only minimal weight in establishing that the applicant resided in the United States during the requisite period.
- Affidavits dated February 11, 2002 and November 12, 2002 from [REDACTED] in which he stated that he has known the applicant since 1981. He also stated that he and the applicant keep in contact with each other by phone and that they have visited each other many times during the years. The affiant has failed to indicate how or where he met the applicant or any other detail that would lend credence to his claimed knowledge of the applicant and his residence in the United States during the requisite period. Because the affidavit is lacking in detail, it can be afforded only minimal weight in establishing that the applicant resided in the United States during the requisite period.
- An affidavit dated February 13, 2003 from [REDACTED] in which he stated that he has known the applicant since 1982. The affiant also stated that he keeps in contact with the applicant as a friend and as a relative. Here, the affiant fails to specify the frequency with which he saw the applicant, or any other detail that would lend credence to his claimed knowledge of the applicant and his residence in the United States during the requisite period. Because the affidavit is lacking in detail, it can be afforded only minimal weight in establishing that the applicant resided in the United States during the requisite period.
- An affidavit dated February 10, 2003 from [REDACTED] in which he stated that he is related to the applicant, that he has known him since January of 1982, and that he has kept in contact with the applicant since then. Here, the affiant fails to specify the frequency with which he saw and communicated with the applicant during the requisite period. The affiant has also failed to provide any relevant and verifiable testimony, such as the applicant's places of residence in this country during the requisite period, to corroborate the applicant's claim of residence in the United States since prior to January 1, 1982.
- An undated letter from [REDACTED] of the Washington Motel Apartments, in which he stated that the Motel employed the applicant as a handyman from December of 1981 to November of 1986. This declaration 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, or the exact dates of employment. 8 C.F.R. § 245a.2(d)(3)(i). Here, the declarant 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 declarant. Because this letter does not conform to regulatory standards, it can be accorded little weight in establishing that the applicant resided in the United States during the requisite period.

- **An undated letter from [REDACTED]** of the India Broadcasting Network in which he stated that the company employed the applicant as an office person from December of 1986 to November of 1990. This declaration 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, or the exact dates of employment. 8 C.F.R. § 245a.2(d)(3)(i). Here, the declarant 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 declarant. Because this letter does not conform to regulatory standards, it can be accorded little weight in establishing that the applicant resided in the United States during the requisite period.

The director noted in the Notice of Intent to Deny (NOID) that the affidavits submitted by the applicant were lacking in detail and that no evidence was submitted to corroborate the statements made in the affidavits. The director requests that the applicant submit additional evidence to support his claim of eligibility for the benefit sought.

The record of proceeding does not reflect that the applicant responded to the director's NOID within the time allotted.

In denying the application the director noted that the applicant failed to respond to the NOID and that the denial was based upon the reasons stated in the NOID.

On appeal, counsel asserts that the applicant did respond to the NOID. He also asserts that the attestations submitted by the applicant are sufficient to verify his presence in the United States since 1981. The applicant submits an affidavit dated September 4, 2006 from [REDACTED] in which he reiterates his statements made in his February 11, 2002 and November 11, 2003 affidavits. The applicant also submits the following attestation:

- An affidavit dated September 4, 2006 from [REDACTED] in which he states that he met the applicant at the Sikh Temple in Los Angeles, California in November of 1981, and that he was told by the applicant that he would be moving to New York in a week. The affiant also states that he and the applicant became friends and that they kept in touch by telephone. He further states that he moved to New York, and that he and the applicant would normally meet each other at family gatherings and other social occasions. The declaration is inconsistent with what the applicant stated on his Form I-687 application at part #31 where he didn't list any affiliations or associations with any organizations or church groups. This inconsistency calls into question the

credibility of the affiant's statement. The affiant fails to specify when he moved to New York, the frequency with which he saw and communicated with the applicant, or any other detail that would lend credence to his claimed knowledge of the applicant and the applicant's residence in the United States during the requisite period. Because the affidavit is inconsistent with statements made by the applicant on his Form I-687 application, and because it is lacking in detail, it can be afforded only minimum weight in establishing that the applicant resided in the United States during the requisite period.

In the instant case, the applicant has failed to provide sufficient, credible and probative evidence sufficient to establish his continuous unlawful residence in the United States throughout the requisite period. He has failed to overcome the reasons for the director's denial. The employment letters submitted by the applicant fail to conform to regulatory standards. It is also noted that the affidavits submitted by the applicant are inconsistent with statements that he made on his Form I-687 application and are lacking in detail.

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 attestations that fail to conform to regulatory standards, are inconsistent with his statements made, and are lacking in detail, 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.