



U.S. Citizenship  
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FILE:

MSC 06 003 10237

Office: SEATTLE (TUKWILA)

Date:

SEP 18 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.

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

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, Seattle. 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 has established his unlawful residence for the requisite time period, that he is qualified under Section 245A of the Act and the CSS/Newman settlement agreements, and that his application for temporary resident status should be granted.

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 245(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)(1).

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)(1) 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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6).

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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he resided in the United States for the duration of the requisite period. Here, the applicant submitted the following documentary evidence that is relevant to the requisite period:

#### Affidavits

- [REDACTED] submitted a sworn affidavit wherein he states that he has known the applicant from approximately November of 1981 until date of the affidavit (December 13, 2006). The affiant states that he met the applicant in the Sikh Temple in Fremont, CA and that the two have remained friends since that time.
- [REDACTED] submitted two sworn affidavits. In an affidavit dated December 12, 2006, the affiant states that he is a resident of New York, and that he has known the applicant since 1981. The affiant states that he met the applicant at a temple located in Queens, NY, and that the two have remained friends since that time. In an affidavit dated November 16, 2006, the affiant states that he has known the applicant since approximately November of 1981. The affiant states that he met the applicant at the Sikh Temple in Queens, NY and that the two have remained friends since that time.

- [REDACTED] submitted a sworn affidavit wherein she states that she has known the applicant since October of 1981, and that the two usually meet at the Gur Nanak Sikh Temple in San Joaquin, CA.

#### Unsworn Witness Statements

- [REDACTED] submitted an unsworn witness statement wherein he states that the applicant lived with him at [REDACTED], Fresno, CA from October of 1981 until June of 1985. The witness states that the applicant assisted him in cooking and cleaning. The witness provides no additional information.
- [REDACTED] submitted an unsworn witness statement wherein he states that the applicant lived with him at [REDACTED] Bakersfield, CA from June of 1985 until May of 1993, and that the applicant paid monthly rent of \$145.00.

Although the applicant has submitted three affidavits and two unsworn witness statements in support of his application, the applicant has not established his continuous unlawful residence in the United States for the duration of the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality; an applicant must provide evidence of eligibility apart from his or her own testimony; and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility.

The affidavits state generally that the affiants have known the applicant since 1981, and that each affiant met the applicant in the United States. The affiants further state that they are friends of the applicants. None of the affiants state that the applicant has lived continuously in the United States for the duration of the requisite period. The two unsworn witness statements state that the applicant lived with the statement authors for various periods of time during the requisite period. They provide no additional relevant information. None of the affidavits or unsworn witness statements provide concrete information, specific to the applicant and generated by the asserted associations with him, that would reflect and corroborate the extent of those associations and demonstrate that they were a sufficient basis for reliable knowledge about the applicant's residence during the time addressed in the affidavits. To be considered probative and credible, witness affidavits must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. Their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the affiant does, by virtue of that relationship, have knowledge of the facts alleged. Upon review, the AAO finds that, individually and together, the affidavits and unsworn witness statements do not contain sufficient detail to establish their assertions. Therefore, they have little probative value.

#### Employment

- [REDACTED] submitted an unsworn statement on what appears to be company letterhead stating that the applicant worked for his company seasonally "on the felid [sic] from 1981 to

1988,” and that the applicant would sometimes stay at the farms at night. Mr. [REDACTED] states that the applicant is a good worker and that he recommends him for employment.

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant’s employment must: provide the applicant’s address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant’s duties; declare whether the information was taken from company records; and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

The employment statement provided is of little evidentiary value as it does not provide the information required by the above cited regulation. The statement does not provide the applicant’s address at the time of employment, identify the exact period of employment, show periods of layoff (or state that there were no periods of layoff), state the applicant’s duties, declare whether the information was taken from company records, and identify the location of such company records and state whether such records are accessible, or in the alternative, state the reason why such records are unavailable. The statement shall, accordingly, be afforded little weight.

#### Attestation

The applicant submitted an attestation from [REDACTED] on the letterhead of “Gurdwa a SAHIB of Bakersfield, Inc.” Mr. [REDACTED] states that the applicant used to visit the gurdwara every month from 1981 to 1991, and that the applicant would contribute his personal time to temple services.

The regulation at 8 C.F.R. § 245a.2(d)(3)(v), as hereinafter set forth, provides requirements for attestations made on behalf of an applicant by churches, unions, or other organizations:

- (v) Attestations by churches, unions, or other organizations to the applicant’s residence by letter which:
  - (A) Identifies applicant by name;
  - (B) Is signed by an official (whose title is shown);
  - (C) Shows inclusive dates of membership;
  - (D) States the address where applicant resided during membership period;
  - (E) Includes the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery;
  - (F) Establishes how the author knows the applicant; and

(G) Establishes the origin of the information being attested to.

The attestation/unsworn statement made on the letterhead of “Gurdwa a SAHIB of Bakersfield, Inc.,” is not signed by an official of that organization whose title is shown, does not state the inclusive dates of membership of the applicant in that organization (although the letter states that the applicant visited the gurdwara every Sunday from 1981-91), does not state the address where the applicant resided during the membership period, does not establish how the statement maker knows the applicant, and does not establish the origin of the information being attested to. The statement is, therefore, of little evidentiary value as it does not comply with the requirements of the above-cited regulation.

The evidence submitted by the applicant, and listed above, does not establish the applicant’s continuous residence in the United States for the requisite time period. Taken as a whole, the evidence submitted lacks sufficient detail to establish the applicant’s presence in this country for the requisite time period. 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 his claim. As previously stated, 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 documents with minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States during the requisite period.

Therefore, based upon the foregoing, the applicant 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.