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U.S. Citizenship
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FILE: [REDACTED]
MSC 05 231 32238

Office: SAN FRANCISCO

Date: **SEP 30 2008**

IN RE: Applicant: [REDACTED]

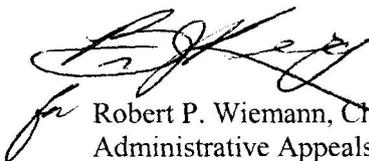
APPLICATION: Application for Temporary Resident Status under Section 245A of the
Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a.

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.


for 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 Director, San Francisco, California. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application on the ground that the applicant failed to establish his continuous residence in the United States in an unlawful status from before January 1, 1982 through the date of attempted filing during the original one-year application period that ended on May 4, 1988.

An applicant for temporary resident status – under section 245A of the Immigration and Nationality Act (the Act) – 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. See 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. See 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. See 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. 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 applicant 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 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.

Although the regulations provide an illustrative list of contemporaneous documents that an applicant may submit, the list also permits the submission of affidavits and any other relevant document. *See* 8 C.F.R. § 245a.2(d)(3)(vi)(L).

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 applicant, a native of India who claims to have resided in the United States since May 1981, filed his application for temporary resident status under section 245A of the Act (Form I-687), together with a Form I-687 Supplement, CSS/Newman (LULAC) Class Membership Worksheet, at the New York District Office on May 19, 2005.

In the Notice of Intent to Deny (NOID), dated October 11, 2006, the director notified the applicant that the evidence submitted was insufficient to establish the applicant’s continuous unlawful residence in the United States from before January 1, 1982 through the date of attempted filing during the original one-year application period that ended on May 4, 1988. The director noted that the applicant’s first Form I-687, submitted on July 11, 1990, was prepared by the Fresno Law Center in Fresno, California, although the applicant’s address as shown on the Form I-687 was listed as [REDACTED] Redwood City, California. The director also noted that the applicant’s attorney at the time was [REDACTED], who was charged on May 31, 1991, with bribing Immigration and Naturalization Service officials, and he was subsequently convicted of these charges. The director also noted that the applicant submitted evidence, consisting of affidavits, however the evidence submitted was not probative. Therefore, the applicant was ineligible for Temporary Resident Status, as he could not establish that he

entered the United States prior to January 1, 1982, and resided continuously in the United States in unlawful status throughout the requisite period. The director granted the applicant thirty (30) days to submit additional evidence.

In the Notice of Decision, dated January 16, 2007, the director denied the application after determining that the applicant had failed to establish his entry in the United States before January 1, 1982, and the requisite continuous residence. The director noted that the applicant responded to the NOID but the evidence submitted was insufficient probative evidence. The director determined, therefore, that the applicant was not eligible for legalization pursuant to section 245a of the INA. Again, the director pointed out that at the time the applicant submitted the first Form I-687 on July 11, 1990, he had been represented by his former attorney, the aforementioned Harbhajan S. Brar.

On appeal, counsel asserts that the applicant has submitted sufficient evidence, including a number of affidavits, to establish his continuous residence. Counsel resubmits some of the same evidence previously provided.

The AAO maintains plenary power to review this matter 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 federal courts have long recognized the AAO’s *de novo* review authority. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). The AAO considers all pertinent evidence in the record, including new evidence properly submitted on appeal.¹

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he continuously resided in the United States in an unlawful status from before January 1, 1982 through the date he attempted to file a Form I-687 during the original one-year application period that ended on May 4, 1988. After reviewing the entire record, the AAO determines that he has not.

Affidavits and letters

The applicant submitted the following:

1. An undated affidavit from _____ stating that he has known the applicant to have resided in the United States since July 1981.

¹ The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1). The record in this case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

2. A letter from [REDACTED], dated March 24, 2003, stating that he has known the applicant to have resided in the United States since December 1981.
3. An affidavit from [REDACTED], sworn to on March 25, 2003. Ms. [REDACTED] states that she has resided in Canada since March 1987, and the applicant, her elder brother, left India for the United States in the middle of 1981, and that he visited Canada in October 1987 for about three weeks while his wife was also in Canada, and he returned to California in the first week of November 1987.
4. An affidavit from [REDACTED], dated March 24, 2003, stating that the applicant, his brother, left India for the United States in 1981. The affiant also states that he resides in Canada but he communicates frequently with the applicant on the telephone.
5. An undated affidavit from [REDACTED] stating that he first came to the United States in 1985. The affiant states, however, that he knows that the applicant had left India in 1981 to go abroad, and has been living in the United States since that time.
6. An affidavit from [REDACTED], notarized on November 11, 2006, stating that he has known the applicant to have resided in the United States since June 1981. The affiant also states that he has kept in touch with the applicant since that time.
7. An affidavit from [REDACTED] notarized on July 12, 1990, stating that he has known the applicant to have resided in the United States since May 1981. The affiant also states that three weeks is the longest time he had not seen the applicant since he came to the United States.
8. An affidavit from [REDACTED] notarized on September 29, 2001, stating that he has known the applicant to have resided in the United States since December 1981

The applicant has submitted a letter and seven affidavits. However, these documents are questionable. The applicant claims that he has resided continuously in the United States since May 1981, and his only departure was in October 1987, for three weeks, to visit relatives, including his wife, in Canada. There is no indication in the record that the applicant had any other absences since his claimed arrival in May 1981. However, the record reflects that the applicant has three children born in India on May 7, 1983, on March 12, 1986, and on November 11, 1989. There is also no indication in the record that his wife has ever been in the United States.

Contrary to counsel's assertion, the above unresolved discrepancies cast considerable doubt on whether the applicant resided in the United States from prior to January 1, 1982 as he claims. 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 (BIA 1988). The applicant has failed to submit any objective evidence to explain or justify the discrepancies in the record. Therefore, the reliability of the remaining evidence offered by the applicant is suspect and it must be concluded that the applicant has failed to establish that he continuously resided in the United States in an unlawful status during the requisite period.

As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. Although not required, none of the affidavits included any supporting documentation of the affiant's presence in the United States during the requisite 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. 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 from prior to January 1, 1982, through May 4, 1988.

As also noted by the director, at the time the applicant submitted the first Form I-687 application, he was represented by [REDACTED] who was convicted of bribing immigration officials. Therefore, the reliability of the remaining evidence offered by the applicant is suspect.

In view of these substantive shortcomings, the AAO finds that the evidence of record has little probative value. They are not persuasive evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through the date of attempted filing during the original one-year application period that ended on May 4, 1988.

Based on the foregoing analysis of the evidence, the AAO concludes that the applicant has failed to establish that his continuous unlawful residence in the United States began before January 1, 1982. Thus, the record does not establish that the applicant entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from that date through the date he attempted to file a Form I-687 during the original one-year application period that ended on May 4, 1988. Accordingly, the applicant is ineligible for temporary resident status under section 245A(a)(2) of the Act.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.