



U.S. Citizenship  
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FILE:



Office: NEWARK

Date:

**APR 03 2009**

MSC 06 035 11080

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.

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, 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 denied the application, finding that the applicant had not provided credible evidence to establish that he had entered the United States prior to January 1, 1982, and thereafter continuously resided in the United States in an unlawful status for the duration of the requisite period.

On appeal, counsel states that the applicant is eligible for temporary resident status since he complied with the requirements of section 245A.

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-*, *supra*. 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 submitted sufficient credible evidence to meet his burden of establishing that he (1) entered the United States before January 1, 1982, and (2) has continuously resided in the United States in an unlawful status for the requisite period of time. The documentation that the applicant submits in support of his claim to have arrived in the United States before January 1, 1982 and lived in an unlawful status during the requisite period consists of affidavits of relationship written by friends and other evidence. The AAO will consider all of the evidence relevant to the requisite period to determine the applicant’s eligibility.

The United States Citizenship and Immigration Services (USCIS) adjudicating officer’s notes reveal that during the Form I-687 application interview on November 20, 2006, the applicant claims to have entered the United States without inspection through Canada in June 1981. However, on the applicant’s Form ETA 750, Application for Alien Employment Certification, filed in conjunction with Form I-140, Immigrant Petition for Alien Worker, which is a part of the record of proceeding, the applicant stated under penalty of perjury that he attended Meerut College, Meerut U.P., India, from May 1980 until May 1982. The applicant could not have been in the United States during the same time he was attending school in India.

The record also contains a Form I-360, Petition for Amerasian, Widow or Special Immigrant, which was filed on behalf of the applicant on July 23, 1997, indicates that the applicant arrived in the United States on April 5, 1995 as a B-2 nonimmigrant and was authorized to stay until October 4, 1995. The record also contains a copy of the applicant’s passport, [REDACTED] that was issued at Bareilly, India, on September 19, 1986. The information from the applicant’s passport is consistent with the information on the applicant’s Form I-360. The copy of the applicant’s nonimmigrant visa page shows that it was issued on March 29, 1995. A copy of the admission stamp in the applicant’s passport shows that he was admitted into the United States on April 5, 1995 at Newark, New Jersey with a B-2 nonimmigrant visa. Moreover, his passport was cancelled and a new passport, [REDACTED] was issued at the Consulate General of India, New York, New York, on June 27, 1997. This evidence establishes that the applicant entered the United States legally as a B-2, visitor for pleasure,

on April 5, 1995 at Newark, New Jersey. The applicant does not submit a copy of his previous passport or other documentary evidence that he entered the United States or Canada prior to January 1, 1982.

Counsel states that in order to demonstrate the applicant's eligibility for relief under section 245A of the Act, the applicant provided affidavits from friends who have knowledge of his initial arrival to the United States in 1981 and his continuous residence during the requisite period. The affidavits from [REDACTED], and [REDACTED] state that they met the applicant at the Sikh Temple in July 1981, August 1981 and August 1985, respectively. However, the applicant's Form I-687 does not indicate any association with a Sikh Temple at part 31.<sup>1</sup> This information also contradicts the applicant's Form ETA 750 that shows that the applicant was residing outside the United States in India from May 1980 until May 1982. The affiant, [REDACTED] who resides in Canada and did not meet the applicant until August 1985 when he visited New Jersey and met the applicant at the temple is unable to attest the applicant's illegal entry in June 1981.

The affidavit from [REDACTED] states that she personally knows that the applicant traveled into the United States illegally in 1981. She does not explain how she gained such knowledge. [REDACTED] states in his affidavit that he personally knows the applicant since 1981 and that he first met him at a convenience store in New Brunswick. On his Form I-687 application, the applicant claims he worked at a convenience store in New Brunswick, New Jersey, from June 1981 to June 1984. The applicant has not provided any evidence of his employment at the convenience store in June 1981 and as stated previously, the applicant's Form ETA 750 shows that the applicant was residing outside the United States in India from May 1980 until May 1982.

In his affidavit, [REDACTED] states that he knows the applicant since December 1985, when he started living with him at [REDACTED] North Bergen, New Jersey. However, the applicant claims on his Form I-687 application that he began residing at the aforementioned address in October 1984 and resided there until October 1988.

The inconsistencies regarding the dates the applicant initially entered and resided continuously in the United States are material to the applicant's claim in that they have a direct bearing on the applicant's residence in the United States during the requisite period. No evidence of record resolves these inconsistencies. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. 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. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The affidavits do not include sufficient detailed information about the applicant's continuous residency in the United States since June 1981. The affiants fail to specify social gatherings and other special occasions or social events where they saw and communicated with the applicant during

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<sup>1</sup> The applicant's subsequent Form I-360 petitioned for the applicant to enter the United States as a special immigrant religious worker, a Sikh priest.

the requisite period. The affiants also fail to indicate details that would lend credence to their claimed knowledge of the applicant's residence in the United States during the requisite period.

The affidavits do not contain concrete information, specific to the applicant and generated by the asserted associations with him, which would reflect and corroborate the extent of those associations and demonstrate that they are 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 witness does, by virtue of that relationship, have knowledge of the facts alleged. Upon review, the AAO finds that the affidavits provided by the applicant do not contain sufficient detail to establish the reliability of their assertions.

In the instant case, the applicant has failed to submit sufficient evidence to overcome the director's denial. The evidence calls into question the credibility of the applicant's claim of continuous unlawful residence in the United States throughout the requisite period. The evidence submitted is insufficient to establish the applicant's 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 requisite period.

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that he entered the United States before January 1, 1982 and 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.

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