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U. S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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**U.S. Citizenship
and Immigration
Services**

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FILE: [REDACTED]
MSC-05-181-10682

Office: LOS ANGELES

Date: **APR 22 2009**

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.


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 Field Office Director, Los Angeles. 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 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.

On appeal, counsel asserts that the applicant has established his unlawful residence for the requisite time period. The AAO has considered counsel's assertions, reviewed all of the evidence, and has made a *de novo* decision based on the record and the AAO's assessment of the credibility, relevance and probative value of the evidence.¹

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

¹ The AAO maintains plenary power to review each appeal 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 AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n.9 (2d Cir. 1989).

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 (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 1982 and lived in an unlawful status during the requisite period consists of witness statements and an attestation from a representative of a Sikh Temple in Los Angeles. Some of the evidence submitted indicates that the applicant resided in the United States after May 4, 1988; however, because evidence of residence after May 4, 1988 is not probative of residence during the requisite time period, it shall not be discussed. The AAO has reviewed each document in its entirety to determine the applicant's eligibility; however, the AAO will not quote each witness statement in this decision.

The record contains four statements of relationship from [REDACTED]. The first statement, dated May 24, 2002, is a fill-in-the-blank form affidavit. The form affidavit states that [REDACTED] has been friends with the applicant since 1981. It states that he has personal knowledge of the applicant's residence in Fresno, California from August 1981 to November 1991. The second

statement is an affidavit dated March 9, 2005. The affidavit provides that [REDACTED] first became acquainted with the applicant in November 1981 at a community temple in Yuba City, California. The affidavit states that [REDACTED] has spoken with the applicant on a monthly basis since their first meeting and he has met the applicant at religious ceremonies at the Los Angeles community temple. The affidavit also provides that [REDACTED] has knowledge of the applicant's position as a cashier at 7-Eleven convenience stores in Southern California and he has visited the applicant at work. The third witness statement from [REDACTED] is dated July 8, 2005. The statement provides that [REDACTED] first met the applicant at a Sikh Temple in Yuba City, California. It states that during the requisite period he met the applicant at the temple in Los Angeles and the applicant called him a few times. The fourth witness statement from [REDACTED] was furnished on appeal and is dated January 30, 2008. It states that [REDACTED] first met the applicant in November 1981 at a community temple in Yuba City.

The record contains three statements of relationship from [REDACTED]. The first statement, dated May 24, 2002, is a fill-in-the-blank form affidavit. The affidavit states that [REDACTED] has been friends with the applicant since 1981. It states that he has personal knowledge of the applicant's residence in Fresno, California from August 1981 to November 1991. The second is a sworn statement dated March 25, 2005. The statement provides that [REDACTED] first met the applicant in August 1981 at the community temple in Los Angeles through the temple priest. The affidavit states that he kept in contact with the applicant over the phone and at religious gatherings at the temples in California. The third witness statement from [REDACTED] is dated July 18, 2005. This statement also provides that he was introduced to the applicant by the priest of the Sikh temple in Los Angeles. It states that during the requisite period, he kept in contact with the applicant through Sikh Temple gatherings, phone calls and parties.

Although [REDACTED] and [REDACTED] state that they have known the applicant since 1981, their statements do not supply enough details to lend credibility to their assertions. For instance, [REDACTED] states that he has knowledge of the applicant's position as a cashier at 7-Eleven stores in Southern California. However, the applicant's Form I-687 application shows that his employment with 7-Eleven and residence in Southern California was outside the requisite period. The applicant indicated on his application that he was "self-employed" in gardening in Fresno, California during the requisite period. Neither of the statements mentions the applicant's position as a gardener. Furthermore, both [REDACTED] and [REDACTED] indicate that they have met the applicant at the Sikh Temple in Los Angeles. However, the applicant failed to show his membership in the Los Angeles Sikh Temple or any other religious organization on his Form I-687 application. At part 31 of the application where applicants are asked to list their involvement with any religious organizations, the applicant responded "none." The AAO finds that the witness statements fail to provide 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 were a sufficient basis for reliable knowledge about the applicant's residence during the time addressed in the statements. Therefore, they have little probative value.

The remaining witness statements consist of a fill-in-the-blank form affidavit from [REDACTED] and sworn statements from [REDACTED] and [REDACTED]. The fill-in-the-blank statement from [REDACTED] dated September 24, 1990, provides that he has personal knowledge of the applicant's residence in Fresno, California from August 1981 to present. It states that his home is very close to the applicant's residence and they keep in touch. The statement from [REDACTED] provides that he first met the applicant at a community temple in Los Angeles in May 1987. It states that he has spoken, seen and visited the applicant many times since 1987. Lastly, the statement from [REDACTED] provides that he first met the applicant in August 1981 at the community temple in Los Angeles. It states that he has since met or spoken with the applicant at various times since 1981. The AAO finds that these witness statements fail to establish the applicant's continuous unlawful residence in the United States during the requisite period. For instance, the witnesses do not indicate how they date their initial meeting with the applicant, how frequently they had contact with the applicant, or how they had personal knowledge of the applicant's presence in the United States. Further, the witnesses do not provide information regarding where the applicant lived or was employed during the requisite period. Moreover, [REDACTED], [REDACTED] and [REDACTED] claim to have known the applicant through the Sikh Temple in Los Angeles. However, as noted above, the applicant failed to show his membership in the Los Angeles Sikh Temple or any other religious organization on his Form I-687 application. For these reasons, the witness statements have little probative value.

In regard to the applicant's involvement at the Sikh Temple Los Angeles, the record contains a letter from the President of the temple, [REDACTED], on the temple's letterhead. [REDACTED] states that he has been informed that the applicant has been attending the congregation since 1981 (the date of the attestation is July 15, 1990). The regulation at 8 C.F.R. § 245a.2(d)(3)(v) provides requirements for attestations made on behalf of an applicant by churches, unions, or other organizations. Attestations must: (1) Identify applicant by name; (2) be signed by an official (whose title is shown); (3) show inclusive dates of membership; (4) state the address where applicant resided during membership period; (5) include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; (6) establish how the author knows the applicant; and (7) establish the origin of the information being attested to.

This attestation fails to comply with the above cited regulations because it does not: state the address where the applicant resided during his membership period; establish in detail that the author knows the applicant and has personal knowledge of the applicant's whereabouts during the requisite period; establish the origin of the information being attested to; and indicate that membership records were referenced or otherwise specifically state the origin of the information being attested to. [REDACTED] statement that he has been informed of the applicant's involvement with the temple since 1981 indicates that he does not have first hand personal knowledge of this information. Therefore, his attestation is of little probative value.

It should further be noted that the applicant showed on his Form I-687 application that during the requisite period he resided at an address that is over 218 miles away from the Los Angeles Sikh Temple. This distance casts doubt upon the applicant's claim of active involvement in temple

during the requisite period. Further damaging to the applicant's claim is that he stated on the instant Form I-687 application that he has never been involved in any religious organizations in the United States. The applicant also failed to indicate his membership in any religious organizations on the initial Form I-687 application he filed in 1990 to establish his CSS class membership. These contradictions also cast doubt upon the credibility of the aforementioned witness statements, which attest to the witnesses' acquaintance with the applicant through his involvement in the Los Angeles Sikh Temple. The contradictions 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. 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 final items of evidence in the record consist of the applicant's own statement and the initial Form I-687 application he filed in 1990 to establish his CSS class membership. As stated previously, to meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's 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). Here, the applicant has failed to provide probative and credible evidence of his residence in the United States. The applicant's evidence lacks sufficient detail, and there are material inconsistencies in the record.

Upon a *de novo* review of all of the evidence in the record, the AAO agrees with the director that the evidence submitted by the applicant has not established that he is eligible for the benefit sought.

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 on this basis.

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