



U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE: [Redacted]
MSC-05-236-17118

Office: NEW YORK Date: **DEC 08 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.

Perry Rhew

Perry Rhew
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, New York. 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. Specifically, the director noted that the applicant provided several differing accounts of his absences from the United States during the relevant period and indicated that these inconsistencies cast doubt on the reliability of the evidence submitted.

On appeal, the applicant asserts that he has established his unlawful residence for the requisite time period. He indicates that his absence was delayed due to an emergent reason.

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. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

The applicant shall be regarded as having resided continuously in the United States if at the time the application for temporary resident status is considered filed, as described above pursuant to the CSS/Newman Settlement Agreements, no single absence from the United States has exceeded 45 days, and the aggregate of all absences has not exceeded 180 days during the requisite period unless the applicant can establish that due to emergent reasons the return to the United States could not be accomplished within the time period allowed, the applicant was maintaining a residence in the United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.2(h).

If the applicant's absence exceeded the 45-day period allowed for a single absence, it must be determined if the untimely return of the applicant to the United States was due to an "emergent reason." Although this term is not defined in the regulations, *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988), holds that "emergent" means "coming unexpectedly into being."

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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.2(d)(6).

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, "[t]ruth is to be determined not by the quantity of evidence alone but by its quality." *Id.* 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 (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.

In this case, the applicant claimed on his I-687 Application that he entered the United States in 1980 and that he has resided in the United States since that time. As noted by the director, the applicant has provided multiple inconsistent accounts of his absences from the United States during the relevant period.

On his Form I-687 dated May 24, 2005, the applicant indicates that he traveled to India from May 1986 until May 1986. In a previously submitted Form I-687, dated May 18, 1990, the applicant

indicates that his only trip abroad during the relevant period was to Liberia from June 1987 until August 1987. This trip was also indicated on the applicant's class membership worksheet dated May 18, 1990. In a May 7, 2007 interview with United States Citizenship and Immigration Services (USCIS), the applicant indicates that he traveled outside the United States to India from January 1986 until May 1986. The AAO notes that based on the applicant's stated absences, he is ineligible for temporary resident status based upon his absence in 1986 and his trip to Liberia from June 1987 until August 1987.

On appeal, the applicant does not explain the inconsistent dates previously provided. He only indicates that his trip to India from January 1986 until May 1986 was delayed for an emergent reason. He indicates that his trip to Liberia in 1987 was for four weeks. He does not provide any evidence of the dates of his absence.

With respect to the applicant's trip to India in January 1986, the applicant attests that he was unable to return earlier as planned. In an affidavit, the applicant indicated that his absence was extended because it took him longer than expected to arrange his marriage and wedding in India. This is inconsistent with the testimony provided by affiants [REDACTED] and [REDACTED] who all indicated that the applicant remained in India due to his grandmother's poor health. All affiants indicate that the applicant remained in India from January 1986 until May 1986 when the applicant's grandmother recovered. The applicant did not provide any further evidence that his grandmother suffered a sudden change in her health that would have caused the applicant to delay his return. Furthermore, the applicant does not explain why he offered several inconsistent accounts of his trip abroad in 1986. 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 applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the application. *Id.* at 591. The affidavits submitted are not sufficient "independent objective evidence" which resolves the multiple inconsistencies inherent in the record.

Continuous unlawful residence is broken if an absence from the United States is more than 45 days on any one trip unless return could not be accomplished due to emergent reasons. 8 C.F.R. § 245a.2(h)(1)(i). "Emergent reasons" has been defined as "coming unexpectedly into being." *Matter of C*, 19 I&N Dec. 808 (Comm. 1988).

The applicant's admitted absence from the United States from January 1986 until May 1986, a period of more than 45 days, is clearly a break in any period of continuous residence he may have established. As he has not sufficient credible which overcomes his previous statements regarding his absence during the relevant period. Based on this inconsistent testimony, 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.

Furthermore, the applicant has failed to provide sufficient evidence of his continuous unlawful residence during the relevant period. He submits affidavits from several individuals, as well as an apartment lease dated 1980, and bank statements which contain handwritten dates. None of the witness statements 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 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, individually and together, the witness statements do not indicate that their assertions are probably true. Therefore, they have little probative value.

The final item of evidence is a sworn attestation from [REDACTED] of Los Angeles, Inc. [REDACTED] states that the applicant has been an active member of the Gurdwara since 1980.

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. The letter from Mr. Singh contains little of the required information and will be given little probative weight.

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.

It is noted that the record contains two court dispositions. On or about September 25, 1991, the applicant was arrested and charged with violating section 25658(a) of the California Business and Professions Code, *Selling Liquor to a Minor*. He was convicted of the charge on an

amended charge, a violation of Section 410 of the California Penal Code (CPC), *Disturbing the Peace*. (Docket No. 91F09795).

It is further noted that on or about July 11, 1991, the applicant was charged with the following misdemeanors:

- *Exhibit a deadly weapon other than a firearm* in violation of Section 417(a)(1) of the CPC;
- *Assault with deadly weapon* in violation of Section 245(a)(1) of the CPC; and,
- *Battery*, in violation of Section 242 of the CPC.

A civil compromise was reached and this case was stayed then terminated. (Docket No. 91F07096). The applicant's criminal history was not a bar to obtaining temporary resident status.

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