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U.S. Citizenship  
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FILE: [REDACTED] Office: SEATTLE  
MSC 05 188 32157  
MSC 07 129 11759 - Appeal

Date: FEB 04 2009

IN RE: Applicant: [REDACTED]

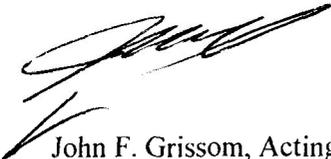
APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the  
Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:

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.

  
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, Seattle, Washington, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director denied the application because the applicant did not establish that he continuously resided in the United States for the duration of the requisite period. On August 11, 2006, the applicant was sent a Notice of Intent to Deny (NOID), which noted deficiencies in the employment letters and affidavits that the applicant had submitted for the record. In his decision, the director found the affidavit of [REDACTED] to be contradictory because he was admitted to the United States as a conditional permanent resident on April 27, 1985 as the spouse of a US citizen and therefore did not live in the United States since 1980 in Yuba City, California. The director also found that [REDACTED] was admitted into the United States as a conditional permanent resident on March 5, 1981, as the spouse of a US Citizen. However, he failed to provide proof that he was living in the Los Angeles area since 1981 and met the applicant at the L.A. Sikh Temple or even that the Temple was in business since 1981. The director determined that as a result of the lack of information, the affidavit that [REDACTED] submitted was neither verifiable nor credible. The director also found that as [REDACTED] was granted Legalization on March 1, 1991 in New York City, and found that since his file was not created until September 18, 1987, his statement attesting that he knew the applicant since December of 1981 and that the applicant had been residing in Northridge, California since November of 1981 until August of 1987 to be neither credible nor verifiable. The director expressed concern that the employment letters purportedly from a firm in Northridge, California, and from a company in Yuba City, California, may have been issued for companies that were not in operation during the time of the applicant's claimed employment.

On appeal, the applicant argues that although [REDACTED] obtained his conditional permanent residence on April 27, 1995, he was able to provide accurate residency information for himself because the affiant was living illegally in the United States in 1980. The applicant states that [REDACTED] was admitted into the U.S. on March 5, 1981 as a conditional resident and that the religious building where they met in Los Angeles was built in 1980. He provides the address for the building to assuage the director's concern that the building did not exist in 1981 and emphasizes that it was built in 1980. The applicant argues that although the [REDACTED]'s file was created by USCIS in 1987, he was living in the United States in an illegal status up until 1987 and that he had known the applicant since 1981 as they met at "the L.A. mutual ceremony."

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 Immigration and Nationality Act (the Act), 8 U.S.C. § 1255a(a)(2). 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 for Status as a Temporary Resident Under Section 245A of the Immigration and Nationality Act, 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).

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.* 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.

The pertinent evidence in the record is described below.

1. A copy of a notarized statement dated September 14, 1990, from [REDACTED] of Northridge, California, who states he has known the applicant since October 1980 and that he has knowledge of the applicant’s residence in the United States since November 1981. He further states that when the applicant first came to the USA he stayed with him in his apartment “in [REDACTED]”
2. A notarized declaration dated February 20, 2002, from [REDACTED] of Auburn, Washington, who states he has known the applicant since 1975. He further states that the applicant told him in 1981 that he was going to America and “we” went to the New Delhi Airport to see him off.
3. An affidavit dated February 20, 2002, from [REDACTED] of Renton, Washington, who states he has known the applicant to have lived in Yuba City, California, and that he met him at the Yuba City Sikh Temple in January 1987.

4. An affidavit dated July 7, 2005, from [REDACTED] of Kent, Washington, who states he can attest to the fact that the applicant has been residing in Northridge, California, from November 1981 until August 1987.
5. An affidavit dated July 18, 2005, from [REDACTED] Washington, who states that the applicant has been residing in Northridge, California, from November 1981 until August 1987. He also states that he met the applicant at the L.A. Sikh Temple in December 1981.
6. A copy of an undated employment verification letter from the manager and partner of Star Cleaners of Northridge, California, indicating the applicant worked at that company from November 1981 to August 1987.
7. A copy of an employment verification letter dated October 1990 from the owner and partner of [REDACTED] and [REDACTED] in Yuba City, California, indicating the applicant worked for the firm in the year 1987 and then to September 1990.

On appeal, the applicant argues that [REDACTED] (Item # 3 above), and [REDACTED] (Item # 5), were able to provide accurate residency information for him because prior to them normalizing their immigration status, they were both living in this country in an illegal status. He has provided no evidence to substantiate this assertion. He also argues that the building where he met [REDACTED] was built in 1980 in Los Angeles. However, he has provided no proof to support this assertion. Additionally, he has not addressed the question of the existence of the companies who purportedly issued him employment letters documenting his work in this country. Also, the applicant did not address the director's objections to the affidavit submitted from [REDACTED] [REDACTED] (Item # 4).

The employment verification letters (Items # 6 and 7) fail to conform to regulatory standards for letters from employers as stated in 8 C.F.R. § 245a.2(d)(3)(i). Specifically, the letters do not include the applicant's address at the time of employment, periods of layoff, whether or not the information was taken from official company records, where the records are located, and whether United States Citizenship and Immigration Services (USCIS) may have access to the records. Given these deficiencies, the employment verification letters are without probative value as evidence of the applicant's residence in the United States during the requisite period.

Other circumstances cause the applicant's evidence to be viewed with skepticism. The record reflects that on July 29, 1995, he filed a Form I-589, Application for Asylum and for Withholding of Removal, under the name [REDACTED]. In that application, he stated that he lived in India from birth until February 20, 1994, when he arrived in New York City. On November 13, 1997, his Form I-589 was approved and he became a lawful permanent resident of the United States. On June 9, 1999, during his interview with a USCIS officer, the applicant executed a Form I-407, Abandonment by Alien of Status as Lawful Permanent Resident, in which he stated:

I had submitted a fraudulent claim for Political Asylum from my country of India under the fraudulent name of [REDACTED]. My true and correct name is a citizen and national of Punjab, India.

The applicant's Form I-210, Voluntary Departure Notice, dated June 9, 1999 establishes that he departed the United States on June 10, 1999 on a flight to India.

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. Further, the applicant must resolve any inconsistencies in the record with competent, independent, objective evidence. Attempts to explain or reconcile such inconsistencies, absent competent objective evidence sufficient to demonstrate where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). These inconsistencies cast doubt not only on the evidence containing the conflicts, but on all of the applicant's evidence and all of his assertions.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate entry into the United States prior to January 1, 1982, and continuous residence during the requisite period.

The evidence must be evaluated not by the quantity of evidence alone but by its quality. 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 its amenability to verification. Given the paucity of credible supporting documentation, the applicant has failed to meet his burden of proof and failed to establish continuous residence in an unlawful status in the United States during the requisite period. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act. The application was correctly denied on this basis, which has not been overcome on appeal. Consequently, the director's decision to deny the application is affirmed.

Section 212(a)(6)(C) of the Act provides:

Misrepresentation. – (i) In general. – Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

In addition, the applicant is inadmissible as he has violated section 212(a)(6)(C)(i). As noted above, the record of proceedings reflects that the applicant sought to and did procure permanent resident status through the filing of a fraudulent Form I-589. While this ground of inadmissibility may be waived, the applicant would remain ineligible for legalization benefits as discussed above.

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