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U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED]  
MSC-05-151-10477

Office: TUKWILA

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:



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.

A handwritten signature in black ink, appearing to read "John F. Grissom".

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, Tukwila. 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 determined 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. The director noted that the affiant [REDACTED] and [REDACTED] failed to submit identity documents to enable the United States Citizenship and Immigration Service (USCIS) to verify their presence in the United States during the requisite period. The director further noted that the USCIS was unsuccessful in the attempts to contact affiant [REDACTED] by phone, and therefore, his affidavit is not verifiable. The director also noted that the applicant submitted a copy of the Sea Mar Lab Form and Medical Clearance Form, dated October 21, 1981, that were signed by

The director noted that a USCIS officer contacted the Sea Mar Community Health Center and was informed that [REDACTED] was employed by the center from October 1, 1996 through March 9, 1999, and that therefore the document has no probative value to establish the applicant's eligibility for the immigration benefits sought. The director stated, "...given the attempted misrepresentation of material facts perpetrated by the submission of this document, the credibility of the other documents submitted in support of your application is highly questionable." The director noted that the applicant testified that his children were born in India on June 19, 1982, and August 13, 1985, and that there was no evidence in the record to show that his wife ever traveled to the United States. The director further noted that the applicant testified to leaving the United States only twice; once in October of 1987 (travel to India) and again in January of 1994 (travel to Canada), and therefore, it was not probable that the applicant entered the United States prior to January 1, 1982 and continuously resided in the United States throughout the requisite period. The director noted that although a copy of an airline boarding pass from Alaska Airlines and a receipt from the [REDACTED] dated March 1987 were some evidence of the applicant's presence in the United States during that year, it was insufficient to establish his continuous unlawful residence in the United States prior to that time. The director further noted that the applicant submitted a number of documents that were dated outside of the requisite time period, and therefore, had no probative value to establish the applicant's eligibility. The director determined that the evidence submitted and the argument made in response to the Notice of Intent to Deny (NOID) was insufficient to overcome the grounds for denial as described in the NOID. In conclusion, the director stated that the record contained numerous discrepancies that had not been resolved by the submission of independent objective evidence on the part of the applicant sufficient to establish his eligibility for Temporary Resident Status under Section 245A of the Immigration and Nationality Act.

On appeal, counsel asserts that the director failed to properly review and weigh the evidence submitted by the applicant, and that neither the relevant statutes nor regulations require the affiants to submit identity documents and other proof of their presence in the United States during the requisite period.

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. *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 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 has submitted sufficient credible evidence to meet his burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The record shows that the applicant submitted the current Form I-687 Application and Supplement to United States Citizenship and Immigration Services (USCIS) on February 28, 2005. The applicant submitted a previous Form I-687 on January 24, 1990.

The applicant submitted copies of an airline boarding pass from Alaska Airlines and a receipt from the [REDACTED] dated March 1987. Although the documents can be considered as some evidence of the applicant’s presence in the United States in March of 1987, it is insufficient to establish his continuous unlawful residence in the United States since prior to January 1, 1982, and throughout the requisite period.

The applicant submitted the following attestations:

- A declaration dated September 23, 1999 from [REDACTED] who stated that he has known the applicant since 1975 in India, and that he met the applicant again in the United States at the Sikh Temple in Los Angeles. He further stated that he accompanied the applicant in 1987 to the INS office where his application was rejected by an immigration officer. Here, the declarant fails to specify the date when he met the applicant at the Sikh Temple. He fails to indicate the frequency with which he saw and communicated with the applicant or the applicant’s place of residence during the requisite period. Therefore, the declaration is insufficient to support the applicant’s claimed residence in the United States during the requisite period.
- An undated declaration from [REDACTED] who stated that he has known the applicant since primary school in India. He also stated that the applicant is a good friend and a hard worker and that they are still in touch with each other. Here, the declarant fails to specify any dates during which he met the applicant in the United States or the nature of their relationship during the requisite period, and therefore, this declaration has no probative value.
- Fill-in-the-blank attestations from [REDACTED] and [REDACTED] in which they stated that they have known the applicant since August 1981 and October 1981,

respectively and that the applicant got their phone number from their fathers and called them. The declarants further stated that they are related to the applicant and that the applicant stayed with them for nearly two months, and that afterwards the applicant worked on a farm. They indicated that they had knowledge that the applicant resided at [REDACTED] Earlimant, CA," from December 1981 to October 1986. Here, the declarants fail to specify the applicant's dates of residency with them or the applicant's dates of employment. The address provided by the declarants is inconsistent with what the applicant stated on his current and previous Forms I-687 at part #30 and #33, respectively. The applicant claimed on his Forms I-687 that he resided at [REDACTED] in San Diego, California from July 1981 to February 1984; and at [REDACTED] Court in San Jose, California from March 84 to December 1986. There has been no explanation given for the inconsistency. The declarants fail to specify which two months the applicant lived with them and where. The declarants also fail to specify the frequency with which they saw and communicated with the applicant during the requisite period. Because the attestations are inconsistent with statements made by the applicant and because they are lacking in detail, they can be accorded little to no probative value.

The applicant submitted the following evidence:

- A photo copy of the applicant's passport issued to him in Barreilly, India on September 29, 1989. The document also bears another date stamp of September 29, 1988. This date appears to have been altered as the original date seems to have been covered-over and the new date has been inserted in its place.
- A receipt for a Greyhound Bus ticket dated February 22, 1984. Here, the bus ticket receipt is non-identifiable in that it does not bear any name, address, or phone number or show who brought and traveled on the ticket.
- A handwritten motel receipt from the [REDACTED] in Bellingham, Washington bearing the applicant's name as a registered guest and dated April 23, 1982. Here, it is evident that the date on the document has been altered from April 23, 1992 to April 23, 1982.
- A copy of a handwritten travel ticket from [REDACTED] bearing the applicant's name as passenger with an issuance date of October 9, 1981. The flight itinerary was from Los Angeles (LAX) to Seattle, Washington (SEA) on April 23<sup>rd</sup> and back to LAX on May 10<sup>th</sup>, with no year indicated. There has been no evidence submitted to demonstrate the authenticity of this document.

The authenticity of the above noted documents is questionable. The applicant failed to address these issues in response to the NOID or on appeal. The applicant has failed to submit any objective evidence to explain or justify the apparent alterations of the noted documents, and therefore, the reliability of the remaining evidence offered by the applicant is also suspect. 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).

In the instant case, the applicant has failed to provide sufficient credible and probative evidence to establish his continuous unlawful residence in the United States since prior to January 1, 1982, and throughout the requisite period. He has failed to overcome the director's basis for denial. Although counsel asserts that the affiants are not required by law to provide identity documents, the applicant was placed on notice of the request made by the director in the NOID. It is further noted that the director did not base his decision solely on the absence of identity documents, but thoroughly reviewed the evidence and accurately determined that the applicant had failed to address the numerous inconsistencies and contradictions found in the record. The attestations submitted are lacking in detail and are inconsistent with statements made by the applicant. The documents submitted by the applicant appear to have been altered or are lacking in authenticity.

It is noted that the record of proceeding shows that the applicant testified that he had two children born in India on June 19, 1982, and August 13, 1985, and that there was no evidence in the record to show that his wife ever traveled to the United States. It is further noted that the applicant testified to leaving the United States only twice; once in October of 1987 (travel to India) and again in January of 1994 (travel to Canada). The applicant has failed to address his apparent absences from the United States that resulted in his fathering his two children.

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 this 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 evidence that appears to have been altered, is inconsistent with the applicant's statements, and are lacking in detail, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States for the requisite period 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.