

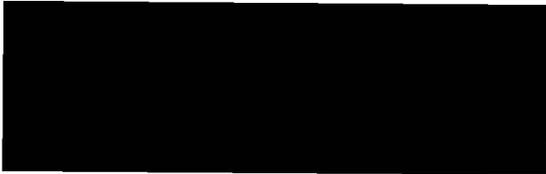
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and Immigration
Services

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FILE:



Office: FRESNO

Date: FEB 26 2009

MSC 06 026 10696

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.

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, Fresno. 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 explains that the affiant, [REDACTED], did not contradict his own affidavit when contacted by telephone by the United States Citizenship and Immigration Services. Counsel states that the applicant worked for [REDACTED] Waterproofing Company and the contact number could be wrong for a variety of reasons. Finally, with respect to the location of the Sikh temple, counsel states that the applicant did not submit any fraudulent documents as donations were being collected for the establishment of the Sikh Temple and weekly prayers were held at different addresses.

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-*, 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 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, an affidavit of employment and two receipts for donations given to the Guru Nanak Sikh Temple of U.S.A. The AAO will consider all of the evidence relevant to the requisite period.

On his Determination of Class Membership form, the applicant states that he entered the United States without inspection on October 1981. The applicant's Form I-687 application states that he resided in Bakersfield, Ca. for the month of October 1981 and later resided at North Hollywood, Ca. from October 1981 to October 1988.

In an affidavit by [REDACTED] he states that he met the applicant in the summer of 1981 at Bakersfield Sikh Temple. However, the applicant's Form I-687 application does not have the applicant's residence in Bakersfield until October 1981 and the applicant claims to have entered the

United States illegally in October 1981, making it impossible to have met the affiant in the summer of 1981.

states in his declaration that the applicant resided in Bakersfield, Ca. from October 1984 to present, however, his declaration has not been sworn to and is undated. He states that he met the applicant at the Bakersfield Sikh Temple but the applicant was not residing in Bakersfield during that time period according to his Form I-687 application. During that time period, the applicant was residing in North Hollywood, Ca.

states in his affidavit that the applicant resided in Arleta, Ca. from April 4, 1988 to June 6, 1990, however, the applicant's Form I-687 has his residence in Arleta, Ca. from October 1988.

has the applicant's place of residence as North Hollywood, Ca. from October 10, 1981 to April 4, 1988. However, the applicant's Form I-687 has the applicant residing in North Hollywood, Ca until October 1988. None of the aforementioned affidavits attest to any other information outside of the applicant's place of residence in the United States. Further, the information in the affidavits is conflicting with other information in the record.

states in his affidavit that he met the applicant at the Fresno Sikh Temple and that the applicant resided in Bakersfield, Ca. from October 1981 to the present date, which is the date he signed the affidavit, June 20, 2005. The affidavit states that the affiant and the applicant have been family friends and does not give any other information. During his telephonic interview with an adjudications officer, Fresno Sub Office, the affiant stated that he did not remember when he first met the applicant and later stated that he first met the applicant at a temple in Selma, Ca and at that time the applicant was living in Los Angeles. The applicant's Form I-687 does not list him ever residing in Los Angeles.

The affidavits from and state that the affiants have known the applicant for 19 years first meeting in April 1982 at the Malibu Temple in Calabasas and in May 1982 at Vermont Temple in Vermont, respectively. The affiants state that during this time, the applicant discussed his life, reasons, time and method of entering the United States with them. Therefore, the affiants state that they know the applicant entered the United States before January 1, 1982 and continuously resided in the United States during the requisite period. However, this knowledge was based on what the applicant told them and not the affiant's personal knowledge of the applicant's whereabouts. Further, the applicant's I-687 application has his place of residence in North Hollywood, Ca. during April and May of 1982.

Additionally, the director's decision states that stated during a telephonic interview that he first met the applicant at the applicant's home in Los Angeles. On appeal, counsel's explanation for the contradiction in testimony regarding where he met the applicant was that he was confused by the question and that he thought the question in the affidavit was meant as

meeting with the applicant on a regular basis, which he did at the Vermont Sikh Temple. The applicant's Form I-687 states that in April and May of 1982, the applicant resided in North Hollywood, Ca. Counsel's explanation does not resolve the affiant's contradictory statements regarding where he met the applicant.

The inconsistencies 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). Therefore, the affidavits have no probative value.

Further, the affidavits lack the detail required to establish their credibility. The affiants fail to explain how they developed and maintained a friendship with the applicant. The affiants fail to explain how they gained the personal knowledge of the applicant's continuous presence in the United States throughout the requisite period. The affidavits do not include sufficient detailed information about the claimed relationship and the applicant's unlawful entry prior to January 1, 1982 and continuous residency in the United States throughout the requisite period. The affiants fail to indicate any other details that would lend credence to their claimed acquaintance with the applicant and the applicant's residence in the United States during the requisite period.

None of the affidavits 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 the affidavits do not contain sufficient detail to establish the reliability of their assertions. The applicant on appeal did not submit evidence to refute any of the director's concerns regarding the lack of evidence provided to prove his entry prior to January 1, 1982 and his continuous residency in an unlawful status throughout the requisite period. The affidavits, while providing some evidence of the applicant's presence in the United States, are 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.

The declaration from [REDACTED] attests to the applicant's employment with their company as a carpenter from January 1, 1982 to June 6, 1990. This has not been substantiated by employment records since the employer states that the applicant was paid in cash. Absent such documentation or any other documentary evidence, the applicant has not shown continuous residence for the period alleged in the employer's declaration and the duration of the requisite period. The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment must: provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's duties; declare whether the information was taken from company records; and, identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable. As the statement does not meet the requirements stipulated in the aforementioned regulation, it will be given nominal weight.

The applicant submitted two receipts dated April 13, 1983 and October 25, 1985 for donations given to the Guru Nanak Sikh Temple of USA signed by [REDACTED]. The director did not accept these documents, stating in his decision that the organization did not exist until July 1984 and that [REDACTED], whose signature appears on the receipts, was president of the temple from 1993 to February 11, 2001. On appeal, although counsel states that the organization filed its papers with the California Business Portal on March 22, 1983, the record does not contain any evidence of the temple being a legally established business and [REDACTED] as an authorized signatory during that time period.

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.