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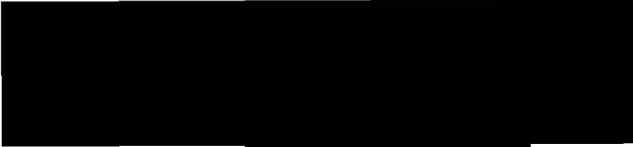
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U.S. Citizenship
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Services

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FILE:



Office: SAN JOSE

Date:

JAN 26 2009

MSC-05-032-10594

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.

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, San Jose. 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, and submits additional documentary evidence. The entire record was reviewed and considered in rendering a decision on the appeal.

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.

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 submitted 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 affidavits and letters (hereinafter referred to as “statements”) of relationship written by friends, an employment verification statement, an attestation from a representative of a Sikh Temple in California, and a physician’s statement. 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 reflects that the applicant furnished statements of relationship from [REDACTED] and [REDACTED]. All of these statements indicate that the authors have known the applicant since the 1980s and that they attest to the applicant being physically present in the United States during the required period. These statements fail, however, to establish the applicant’s continuous unlawful residence in the United States for the duration of the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality; 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.

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 statements. To be considered probative and credible, witness statements must do more than simply state that an author 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 are of little probative value.

The applicant submitted a letter from [REDACTED] Sikh Temple Livingston (California), on the center's letterhead. [REDACTED] states in his letter, dated December 31, 2002, that the applicant has been involved with the temple since 1981. 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 letter fails to comply with the above cited regulation 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. Moreover, the applicant indicated on his Form I-687 that he has never been affiliated or associated with any religious organizations. Given these deficiencies, this letter is of little probative value.

The applicant submitted an affidavit from [REDACTED] attesting to the applicant's employment with his trucking company. The affidavit states that [REDACTED] has managed trucking companies in California since 1983. The affidavit indicates that the applicant began his employment with [REDACTED] trucking company in 1985 as a lumper and general helper for maintenance of the trucks. The affidavit states that the applicant worked with [REDACTED] from 1985 until 1991 and was paid in cash. The regulation at 8 C.F.R. § 245a.2(d)(3)(i) provides that letters from employers must include: (A) Alien's address at the time of employment; (B) Exact period employment; (C) Periods of layoff; (D) Duties with the company; (E) Whether or not the information was taken from official company records; and (F) Where such records are located and whether the Service may have access to the records. If the records are unavailable, an affidavit form-letter stating that the alien's employment records are unavailable and why such records are unavailable may be accepted in lieu of subsections (E) and (F).

[REDACTED] affidavit does not fully comply with the above cited regulation because it does not: provide the applicant's address(es) during the time of employment; describe his duties with the company; and convey whether the information regarding the applicant's employment was taken

from official company records, where such records are located, and whether U.S. Citizenship and Immigration Services (USCIS) may have access to the records. Notably, [REDACTED] affidavit, dated October 20, 2002, fails to explain how he was able to date the applicant's employment with his trucking company from 1985 to 1991. It is unclear whether he referred to company records, documentation from the applicant, or his own memory. Furthermore, [REDACTED] affidavit does not provide the name of the trucking company that employed the applicant during the requisite period. Finally, it should be noted that the applicant did not provide any employment history on the prior I-687 application he filed for a determination of his CSS class membership. This omission casts further doubt upon the credibility of [REDACTED] affidavit. Given these deficiencies, this affidavit is of little probative value.

The applicant submitted a letter from [REDACTED] of the Sekhon Medical Group Inc. This letter, dated September 25, 2006, states that the applicant was seen as a patient for medical problems on March 6, 1981, March 9, 1981, February 22, 1983, February 24, 1983, May 2, 1983, June 7, 1983, March 13, 1986, February 24, 1987, September 15, 1988 and January 27, 1989. This letter is vague because it fails to identify the applicant's specific medical problems or any prescribed treatment plan(s). Furthermore, [REDACTED] fails to indicate whether he was the attending physician or if the applicant was treated by another individual. Finally, Sekhon Medical Group's letterhead shows that it is located in Yuba City, California. According to the applicant's Form I-687, he resided in Modesto, California from March 1981 to July 1985 and Santa Clara, California from July 1985 to March 1992. Modesto and Santa Clara are respectively 121 miles and 157 miles in driving distance from Yuba City.¹ The distance of [REDACTED] practice from the applicant's residence casts further doubt upon the credibility of this letter. Therefore, it is of minimal probative value.

On October 9, 2007, the director issued a notice of intent to deny (NOID) to the applicant, finding that he failed to meet his burden of proof in establishing his eligibility for temporary resident status. Specifically, the director noted that on October 5, 2007, USCIS contacted the Sikh Temple in [REDACTED] to verify the content of their statements. [REDACTED] of the Sikh Temple informed the USCIS officer that per temple records the applicant has been a member of the temple since 1991. This information contradicts the letter from the Sikh Temple, which states that the applicant has been involved with the temple since 1981. [REDACTED] informed the USCIS officer that she has known the applicant since 2004. This information contradicts the letter from Ms. [REDACTED], which states that she has known the applicant since 1981. These contradictions cast doubt upon the applicant's eligibility for temporary resident status.

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, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

¹ <http://maps.google.com/>

The applicant failed to submit any type of rebuttal to NOID. On appeal, the applicant submits the following statements:

- A statement from [REDACTED] asserting that he met the applicant at the Sikh Temple in Livingston, California in March 1981;
- Two statements² from [REDACTED] asserting that there was a misunderstanding when she was contacted at the Sikh Temple by the USCIS officer. [REDACTED] states that she has only known the applicant since her entry into the United States in 1994;
- Two statements³ from [REDACTED] asserting that she met the applicant in Modesto, California in 1981, but lost contact with him in 1985. [REDACTED] states that she met the applicant again in 2004 in Sacramento, California.
- Two statements⁴ from [REDACTED] of the Sikh Temple, asserting that he met the applicant at the Sikh Temple in Livingston, California in 1981. [REDACTED] states that he personally knows of the applicant's addresses during the requisite period in Modesto, California and Santa Clara, California;
- A statement from [REDACTED] asserting that he met the applicant in 1982 at a Sikh Temple in Fremont, California. [REDACTED] states that the applicant was employed from 1985 to 1991 as a truck driver and helper for [REDACTED] in Tracy, California; and
- A statement from [REDACTED] Board Member of the Sikh Temple, stating that he met the applicant at the Sikh Temple in March 1981. [REDACTED] states that the applicant was living in Modesto, California from 1981 to 1985.

Again, 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 statements. To be considered probative and credible, witness statements 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. Therefore, these statements will not be considered independent objective evidence to overcome the inconsistencies identified by the director.

Finally, the AAO finds that the applicant's claim of continuous residence in the United States during the requisite period is seriously undermined by documentation found in USCIS records. USCIS records reveal that on May 10, 1993, the applicant filed an asylum application with the former Immigration and Naturalization Service (the Service). The applicant signed this application under penalty of perjury, declaring that the information contained in the application is true and correct to the best of his knowledge and belief. At part A of this application, the applicant stated that he

² The statements are dated October 30, 2007 and June 24, 2008.

³ The statements are dated October 18, 2007 and June 22, 2008.

⁴ The statements are dated November 1, 2007 and June 24, 2008.

arrived in the United States on April 11, 1992. At part D of this application, the applicant stated that he had never traveled to the United States before this date. On May 19, 1995, the applicant filed a second asylum application with the Service. The applicant signed this application under penalty of perjury, certifying that the application and the evidence submitted with it are true and correct. At part A of this application, the applicant stated he arrived in the United States without inspection on April 11, 1992. At Part E of this application, the applicant stated that he resided in Gurdasspur, Punjab, India from May 1956 to April 1992. The applicant's responses on his two asylum applications indicate that he was actually residing in India during the entire requisite period. This inconsistency seriously undermines the applicant's credibility as well as the credibility of his claim of continuous residence in the United States for the requisite period.

As stated, 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. A review of the evidence submitted with the applicant's Form I-687 application shows that it is, in totality, of little probative value as corroborating evidence of his entry into the United States prior to January 1, 1982 and continuous residence in the United States during the requisite period. Therefore, the AAO finds that the applicant has not submitted any independent objective evidence that would overcome the above cited inconsistency.

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.