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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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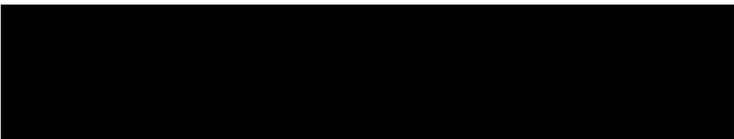
FILE: [REDACTED] Office: DETROIT
MSC 06 026 31161

Date: JUN 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, Detroit. 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 states that the applicant's Form I-687 application should not be denied because of the United States Citizenship and Immigration Services (USCIS) inability to contact the affiants providing the affidavits. Counsel states that the applicant should be given time to submit additional evidence.

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-*, *supra*. 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 his father and friends of the family, a letter signed by the priest of the Sikh Cultural Society, Inc. and other evidence. The AAO will consider all of the evidence relevant to the requisite period to determine the applicant’s eligibility.

In the applicant’s sworn statement taken during his Form I-687 application interview, the applicant stated that he first entered the United States from Canada in September 1981 with his father. In the applicant’s response to the director’s notice of intent to deny (NOID), he stated that he came to the United States in November 1981 with his father.

The applicant submitted affidavits from [REDACTED] and [REDACTED] to establish his initial entry and residence in the United States during the requisite periods. The affidavit from his father, [REDACTED] states that he came to the United States with the applicant in September 1981 and that they resided at [REDACTED], Brooklyn, New York. The affiant states that due to his illness, he left the United States in 1988.

In his affidavit, [REDACTED] states that he has known the applicant since he arrived in the United States and that the applicant has been living in the United States since September 1981. [REDACTED] and [REDACTED] state that they have known the applicant’s father, [REDACTED] since 1981 and that he came to the United States with his son, [REDACTED] in September 1981. In their affidavits, the affiants do not confirm the applicant and his father’s address in the United States in 1981 but rather provide the applicant’s current address, [REDACTED] Richmond Hill, New York. The affiants state that the applicant’s father presently resides in India. [REDACTED]

attests to the applicant's good moral character. The affidavits provide no other information concerning the applicant.

There is no evidence of record from or identifying the adult responsible for the applicant's care when his father returned to India in 1988, when the applicant was 12 years old. The applicant has not submitted any school or medical records from his childhood in the United States.

In an attempt to clarify the statements made in their affidavits, representatives of USCIS tried to contact the affiants telephonically and by mail. USCIS was not successful in contacting the affiants by phone and the affiants did not respond to the written request for additional information regarding the information given in their affidavits.

Upon review, the affidavits lack the detail required to establish their credibility. 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 explain how they maintained a relationship with the applicant. 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 and his father, 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.

The affidavits do not contain sufficient detail to establish the reliability of their assertions. The applicant on appeal did not submit evidence to address 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 do not establish the applicant's claim that he entered the United States before January 1, 1982 and resided in the United States for the entire requisite period.

In a letter dated December 9, 2005, the priest of the Sikh Cultural Society, Inc. states that the applicant has been a member of its congregation for a long time. The letter does not state when the applicant became a member of the congregation and does not corroborate any of the information given by the applicant concerning his initial entry, periods and places of residence and employment in the United States. Further, 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 does not contain most of the aforementioned requirements and therefore will be given nominal weight.

Counsel states on appeal that the applicant should be given time to gather additional documents and information. However, an applicant applying for adjustment of status under this part has the burden of proving by a preponderance of evidence that he or she is eligible for adjustment of status under section 245a of the Act. 8 C.F.R. § 245a.2(d)(5). The applicant has not met that burden.

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.