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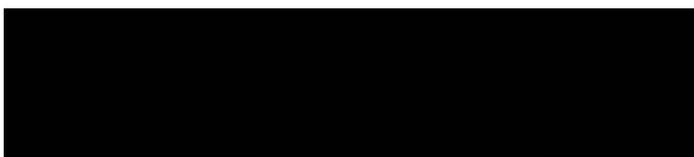
U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office MS 2090
Washington, DC 20529-2090



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FILE:

MSC 05 264 10293

Office: TUKWILA

Date:

JUN 25 2009

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 if your case was 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 (together comprising the I-687 Application). The director denied the application for temporary residence because the applicant could not provide credible evidence that he entered the United States prior to January 1, 1982 and resided continuously in an unlawful status for the requisite period. Specifically, the director noted significant conflicts in the evidence between the Form I-687 and an application for asylum (Form I-589) completed by the applicant on March 16, 1994, and that such conflicts remained unresolved despite the issuance of both a Notice of Intent to Deny (NOID) on February 23, 2006 and a Request for Evidence on October 31, 2006. The director concluded that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

The applicant is represented by counsel on appeal. Counsel argues that the director's denial of the application for temporary residence (Form I-687) "is inconsistent with the governing standards for determining whether an applicant has proved his residence and presence in the United States," and that the director "erroneously rejected" the affidavit submitted by the applicant in support of his Form I-687. The AAO has reviewed all of the documents and evidence in the file, including the applicant's testimony and evidence submitted before the immigration judge and the proceedings before the Board of Immigration Appeals (BIA) as well as the proceedings before the Ninth Circuit Court of Appeals. We conclude that the director's decision is correct and we affirm her conclusions.

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)(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).

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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.2(d)(6).

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, "[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.

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 (BIA 1988). Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the application. *Id.* at 591.

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 (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 has furnished sufficiently credible evidence to meet his burden of establishing continuous unlawful residence in the United States for the

duration of the requisite period, and that he is otherwise admissible to the United States. Here, the applicant failed to meet this burden.

The AAO has reviewed all of the evidence in the file in its entirety. We note that the evidence of record includes, in addition to the application for temporary residence (Form I-687) presently before the AAO, an application for asylum (Form I-589) completed by the applicant on March 16, 1994 and signed by him under penalty of perjury on August 26, 1998. In response to Question no. 12 the applicant states that he arrived in the United States on January 28, 1994. In an amendment to the I-589 signed by the applicant on August 26, 1998, the applicant elaborates on his claim for asylum. He explains that in conjunction with his father's political activities in support of the Sikh independence movement in June 1984, "young Sikh activists were very friendly towards me." The applicant goes further to state that, like his friends, he was active in sports, and that "through [his] friendships with Federation members," he began to attend Sikh Federation sponsored events, to donate money, to hand out leaflets and erect posters, and to distribute literature. The applicant also states in the amended application that he was arrested sometime in November, 1992 and mistreated by the local police authorities. All of this evidence is inconsistent with the applicant's claim on the Form I-687 that he initially entered the United States sometime in October, 1981.

Furthermore, the record contains a Biographic Information Statement (Form G-325) wherein the applicant states that he was self-employed in Bassian, India from 1980 to December, 1993. The applicant identifies his address as Bassian, Punjab, India from the date of his birth until December, 1993. Notes from the applicant's asylum interview reveal that the applicant confirmed that he first entered the United States on January 28, 1994, and also that he attended school in India until 1983.

The AAO has also thoroughly reviewed the proceedings before the immigration judge. We note that the applicant, who was represented by counsel at all hearings, conceded the allegations in the Notice to Appear (Form I-862), including the charge of entering the United States without inspection on or about January 28, 1994. This evidence further undermines the credibility of the information contained in the Form I-687.

In contrast, the applicant submitted his own affidavit dated March 18, 2006 in support of his application for temporary residence stating that he first entered the United States in October, 1981 via the border at Blaine, Washington, using a false Canadian passport. However, during the asylum and immigration court proceedings discussed above, the applicant either stated or conceded that he entered the United States approximately 13 years later, in 1994, through San Ysidro, California, using a false Indian passport with a Malaysian visa under the name [REDACTED]

These inconsistencies serve to undermine the applicant's credibility regarding the first requirement for temporary resident status, *i.e.*, that it is probably true that the applicant entered the United States for the first time either on or before January 1, 1982. *Matter of E-M-, supra*. Other than his own assertions, the only evidence the applicant submitted to establish the requisite date of entry is two affidavits from his brother and sister-in-law, [REDACTED] and [REDACTED], dated March 20, 2006. The affiants state that they have known the applicant for several years and that

they attest to the applicant being physically present in the United States during the required period. These affidavits 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 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, individually and together, the witness statements do not indicate that their assertions are probably true. Therefore, they have little probative value. 8 C.F.R. § 245a.2(d)(6). Other evidence includes photocopies of mortgage documents for time periods not relevant to the application for temporary residence; therefore, they will not be discussed. The AAO concludes that the applicant has not established eligibility for temporary resident status in accordance with the terms of the settlement agreements.

The AAO notes that the record contains court documents that suggest the applicant has two arrests on two different occasions under two different docket numbers in the state of Washington on criminal charges involving rape and assault. These documents, which also include federal criminal background investigation records, indicate that the applicant was arrested on or about April 27, 1999 on a charge of rape, and that this charge was ultimately dismissed without prosecution on April 28, 1999 ([REDACTED]). The second arrest occurred on July 9, 1999 on a charge of assault [REDACTED]. The record suggests that the applicant entered into a plea agreement on October 14, 1999 to undergo six months of "intensive counseling", and that upon the completion of this and other conditions, the charge of assault would be dismissed with prejudice. The applicant's motion to dismiss was granted by the trial court on November 14, 2000.

Because of the nature of the plea agreement and the terms and conditions of probation, the AAO concludes that the court documents establish that the applicant has at least one conviction for assault.¹ Although the court records do not identify the section of the Washington Penal Code

¹ An alien who has been convicted of a felony or of three or more misdemeanors committed in the United States is ineligible for adjustment to Lawful Permanent Resident status. 8 C.F.R. § 245a.18(a)(1). The term 'conviction' means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where - (i) a judge or jury has found the alien guilty or

under which the applicant was convicted, our review of the Washington Penal Code indicates that assault may be classified as either a felony or a misdemeanor offense. However, as the applicant has not established continuous residence and continuous physical presence for the requisite period, the AAO need not determine whether the applicant's conviction for assault disqualifies him for temporary resident status.

The applicant has not met his burden of proof to establish eligibility for temporary residence status because he has not provided credible, probative and internally consistent evidence that he initially entered the United States on or before January 1, 1982 and remained in an unlawful status for the requisite period. 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.

the alien has entered a plea of guilty or *nolo contendere* or has admitted sufficient facts to warrant a finding of guilt, and (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed. Section 101(a)(48)(A) of the Immigration and Naturalization Act (Act), 8 U.S.C. § 1101(a)(48)(A).