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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
MSC 05 140 10473

Office: SEATTLE

Date: MAR 02 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: SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

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 District Director, Seattle, and 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. Specifically, the director discussed the overly broad affidavits and noted other deficiencies that rendered the affidavits unsuitable for the purpose of establishing the applicant's residence in the United States during the relevant time period. Accordingly, the director denied the application, finding that the applicant had not met his burden of proof and was, therefore, not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, the applicant disputes the adverse conclusion and addresses several of the director's adverse findings.

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 Immigration and Nationality Act (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 until the date of filing the application. 8 C.F.R. § 245a.2(b)(1).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and presence in accordance with the regulation at 8 C.F.R. § 245a.2(b), "until the date of filing" shall mean until the date the alien attempted to file a completed Form I-687 application and fee or was caused not to timely file, consistent with the class member definitions set forth in the CSS/Newman Settlement Agreements. 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.* 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 (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 sufficient credible evidence to demonstrate that he resided in the United States during the requisite time period. Here, the applicant has failed to meet his burden. The record shows that the applicant has provided the following documentation in support of his claim:

1. Identical affidavits from [REDACTED] and [REDACTED] dated August 24, 2001 and August 25, 2001, respectively. Both affiants stated that they had known the applicant since November 1981 and knew that the applicant was living in Bakersfield, California at that time. Both affiants claimed to have visited the applicant at the Bakersfield Sikh Temple and got together with the applicant at social gatherings. No social gatherings were specifically identified. Both affiants also attested to the applicant's relocation to Seattle in 1991. It is noted that this information is inconsistent with the list of residences provided in No. 30 of the Form I-687 filed on February 17, 2005, in which the applicant indicated that he continued to reside in California until March 1998 at which time the applicant claimed to have moved to British Columbia where he purportedly remained until March 2001 when he commenced residing in Kent, Washington. Thus, not only did these affiants provide general testimony which failed to convey any details that would lend credibility to their claimed 20-plus year relationships with the applicant, but they also provided information that is inconsistent with the applicant's own account of his residence in the United States.
2. Two affidavits from [REDACTED], one dated August 14, 1991 and a more recent affidavit dated July 11, 2001. In the first affidavit, the affiant stated that he knew the applicant since December 1981 and that the applicant is a relation of his. It is noted that the affiant misspelled the applicant's first name and did not specify how he is purportedly related to the applicant. In his more recent affidavit, the affiant again claimed that he has known the applicant since December 1981 and generally discussed the applicant's residence

in the Bakersfield area where he claimed he visited the applicant and saw him at social gatherings. As with the prior affiants, no specific social gatherings were identified. This affiant's testimony is also inconsistent with the applicant's account of his own residence in the United States. Specifically, in his first Form I-687, completed in 1991, the applicant stated that he moved to Seattle, Washington in 1991 and in his more recent Form I-687 the applicant claimed that he commenced residing in the State of Washington in 2001. Both of these claims are inconsistent with that of the affiant who claimed that the applicant moved to Seattle in 1998. Additionally, this affiant's testimony is lacking in any details that would lend credibility to his purported 20-plus year relationship with the applicant.

3. Affidavits from [REDACTED] and [REDACTED] dated October 25, 2001 and October 26, 2001, respectively. Both affiants were residing abroad at the time of their respective affidavits and asserted that they personally knew the applicant and his family and were aware of the applicant's traveling abroad in 1981. While both affiants claimed that the applicant called them upon reaching his destination abroad, neither claimed to have specific knowledge that the applicant's destination was the United States. Moreover, even if the affiants were aware of the applicant's purported destination, neither had first-hand knowledge of the applicant's claimed residence in the United States during the requisite time period.

After reviewing the documentation provided, the director issued a notice of his intent to deny (NOID) on August 2, 2006. The director reviewed the various affidavits that were submitted and determined that the affidavits in Nos. 1 and 2 contain no verifiable information. With regard to the affidavits in No. 3, the director properly noted both affiants' lack of first-hand knowledge of the applicant's entry into and residence in the United States.

In response, the applicant submitted a letter dated August 22, 2006 stating that he lost contact with the affiant in No. 2 above. The applicant provided two additional affidavits, executed on August 19, 2006, from the affiants in No. 1 above. Neither affiant offered more information than was initially provided in each respective affidavit. The applicant also provided an undated affidavit from [REDACTED] and an affidavit dated August 11, 2006 from [REDACTED]. [REDACTED] provided the applicant's date of birth, stated that he has known the applicant since November 1981, and claimed that the applicant initially resided in Bakersfield, California and currently resides in Seattle, Washington. [REDACTED] stated that he became acquainted with the applicant in July 1984 and provided the applicant's two residences in Bakersfield, California from 1984 to 1991. This affiant also stated that the applicant moved to Seattle, Washington in May 1991. As with statements from the affiants in Nos. 1 and 2 above, this affiant's statement is inconsistent with the applicant's own account of his residences in the United States.

In a decision dated January 9, 2007, the director reiterated the lack of verifiable information provided by most of the affiants whose statements were submitted in support of the applicant's claim. The director also noted the lack of documentation to show the existence of the Bakersfield Sikh Temple, where several of the affiants purportedly met the applicant, and further commented on a discrepancy in the information

provided by [REDACTED]. Specifically, the director stated that Service records show this individual as having been admitted to the United States on September 17, 1985 for lawful permanent residence as the spouse of a U.S. citizen. As such, the affiant's claim that he met with the applicant in Bakersfield in 1984 is inconsistent with this independently recovered information. It is noted that any inconsistencies in the record must be resolved 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. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

On appeal, the applicant asserts that the Sikh Temple he attended in 1981 was in someone's garage and that proof of the temple's existence is not available. However, the applicant's statement is not credible in light of information provided in No. 30 of the latest Form I-687 where the applicant stated that from October 1981 to April 1991 he resided at a Sikh Temple located in Bakersfield, California. Further, the applicant points out that [REDACTED] affidavit was signed in front of a notary, which the applicant asserts lends credibility to the statements put forth by the affiant. The applicant's statement, however, is without merit, as a notary need not have personal knowledge of facts claimed in every document he/she notarizes. While a notary can verify the identity of the affiant making various assertions under oath, he/she cannot attest to the validity of the information claimed by every affiant. Additionally, in No. 31 of the most recent Form I-687, which instructs the applicant to identify his affiliations with religious and other organizations, the applicant indicated that this portion was not applicable to him and did not reveal an affiliation with any organizations. As such, the claims of the affiants who discuss the applicant's affiliation with the Bakersfield Sikh Temple are inconsistent with information the applicant provided and attested to under oath in the Form I-687.

Lastly, the record contains documentation associated with the applicant's attempt to obtain refugee status in Canada, which further impugns the applicant's credibility. Namely, the applicant completed a Canadian immigration form IMM 5249 in which he clearly stated in No. 17 of the application that from the date of his birth until April 1998, he resided in India. In Canadian immigration form IMM 5001 the applicant indicated that from April 1984 to April 1998 he was self-employed as a farmer in Rajiana, India. The record also contains two different dates of birth for the applicant. The Canadian IMM 5249 shows the applicant's date of birth as January 8, 1969, while the applicant's Forms I-687 and I-485 show the applicant's date of birth as August 15, 1962.

This and the other considerable inconsistencies discussed above give rise to serious doubts as to the validity of the applicant's claim as well as the applicant's credibility in general. 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). In the present matter, the applicant's documentation is primarily comprised of affidavits with questionable credibility. Moreover, doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. *Id.*

In summary, the applicant has provided no contemporaneous evidence of residence in the United States relating to the 1981-88 period, and has submitted deficient attestations from various affiants concerning that period. Contrary to the applicant's assertions, merely submitting statements from affiants who provided little more information than the month and year of their first encounters with the applicant and their general claims of having known of the applicant's residence in the United States during the relevant time period is insufficient. The absence of sufficiently detailed supporting 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. Additionally, the applicant failed to provide evidence or to address the inconsistency regarding [REDACTED]'s date of entry into the United States and the claim that he became acquainted with the applicant prior to that date of entry.

Given the considerable inconsistencies of the applicant's statements as well as his reliance upon documents with minimal probative value, it is concluded that the applicant has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through the date he attempted to file a Form I-687 application as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E-M-*, 20 I&N Dec. 77. 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.