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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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[REDACTED]

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FILE: [REDACTED]
MSC-06-096-10508

Office: MIAMI

Date:

OCT 05 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:

[REDACTED]

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.

[Handwritten signature]

Perry Rhew
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, Miami. 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, the applicant asserts that he has established his unlawful residence for the requisite time period and that the director's decision was arbitrary and an abuse of discretion.

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).

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) 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 periods, 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, 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).

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. See 8 C.F.R. § 245a.2(d)(6). The weight to be given any affidavit depends on the totality of the circumstances, and a number of factors must be considered. More weight will be given to an affidavit in which the affiant indicates personal knowledge of the applicant's whereabouts during the time period in question rather than a fill-in-the-blank affidavit that provides generic information. The regulations provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment or attestations by churches or other organizations. 8 C.F.R. §§ 245a.2(d)(3)(i) and (v).

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 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 (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 1982 and lived in an unlawful status during the requisite period consists of affidavits and letters. The AAO has reviewed each document to determine the applicant's eligibility; however, the AAO will not quote each witness statement in this decision.

The record contains testimony from the following affiants:

- [REDACTED] who indicates that he met the applicant in November 1981 at a Diwali function in Houston, Texas. He indicates that following their initial meeting, he saw the applicant several times at a local Indian store in 1982.

- [REDACTED] who indicates that she rented an apartment to the applicant's father in Thomasville, Georgia from 1983 until 1988.
 - [REDACTED] and [REDACTED] who indicate that they met the applicant in 1983.
 - [REDACTED] and [REDACTED] who indicate that they met the applicant in 1983 while he was visiting his father's workplace.
 - [REDACTED] and [REDACTED] who indicate that they met the applicant in 1983 and that they has knowledge that the applicant came to the United States in 1981 with his mother, however, they do not indicate the basis of this knowledge. They also indicate that the applicant lived in Thomasville, Georgia from 1983 until 1989 and that he graduated from Thomasville High School in 1989. [REDACTED] indicates that she attended the applicant's graduation ceremony.
 - [REDACTED] and [REDACTED] who indicate that they met the applicant in New York in 1981 when the applicant was attending their Hindu temple. They indicate that since 1983, they have seen the applicant visit the temple every year.
- [REDACTED] who indicates that the applicant is his nephew and that he visited him in Houston, Texas in 1984, and that the applicant has visited his home in Jacksonville twice since 1984. His testimony appears to be inconsistent with the applicant's Form I-687 in which he indicates that he moved from Houston, Texas to Thomasville, Georgia in 1983.
- [REDACTED] and [REDACTED] who indicate that they are the applicant's uncle and aunt and that they visited the applicant and his mother in Houston and Thomasville but they do not provide the dates of these visits.
 - [REDACTED] who indicates that she knew the applicant in India and that she has seen the applicant and his parents at least once a year at the temple in New York since she came to the United States. She does not indicate when she came to the United States.
 - [REDACTED] the applicant's grandmother, who indicates that her daughter and grandson moved to the United States in 1981 however, she does not indicate that she ever visited them in the United States. She states that she has lived in India and Hong Kong and kept in touch with the applicant only via telephone and letter. Thus, she lacks direct, personal knowledge of the applicant's residence in the United States during the relevant period.
 - [REDACTED] the applicant's aunt who indicates that the applicant moved to the United States in 1981. Like [REDACTED], the affiant does not indicate that she ever

visited the applicant in the United States and therefore, she also lacks direct, personal knowledge of the applicant's residence in the United States during the relevant period.

- who indicates that the applicant is a follower of Shri Paramhans Advait Mat Temple and that the applicant has resided in the United States since 1981. This letter does not conform to the regulation at 8 C.F.R. § 245a.2(d)(3)(v) which 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 testimony by Mr. [REDACTED] 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. For this reason, the letter is not deemed probative and is of little evidentiary value.

The record of proceedings also includes a copy of the applicant's high school diploma indicating that he graduated from Thomasville High School in Thomasville, Georgia in 1989. He also submits school identification records, report cards and transcripts from Thomasville High School indicating that he attended the school from 1986 until graduating in 1989. He also submits a Georgia State Patrol certificate dated March 20, 1988 indicating that he completed a drug awareness program. The record of proceedings also contains a copy of the applicant's Junior High School record indicating that he entered the school in August 1983, and a certification from Colquitt County Board of Education that the applicant attended school there from 1983 until 1987. He does not submit any additional school records which would support his residence in the United States prior to 1983.

Additionally, the record of proceedings includes the following evidence:

- A handwritten receipt containing the applicant's name and dated July 6, 1981;
- Handwritten receipts containing the applicant's name and dated December 6, 1982, and September 20, 1984, ;

The AAO has conducted a *de novo* review of the entire record of proceedings and finds that the applicant has not established by a preponderance of the evidence that he entered the United States prior to January 1, 1982. The evidence contained in the record for the period following August 1983 is probative and credible. However, the evidence which pertains to the time period prior to August 1983 lacks sufficient detail to be considered probative. It consists only of

affidavits and receipts which are vague and do not indicate that the affiants have direct, personal knowledge of the applicant's residence in the United States prior to January 1, 1982 and until August 1983. Most affiants fail to indicate how they date their acquaintance with the applicant, where the applicant lived during the relevant period, and how they have direct, personal knowledge of the applicant's continuous residence. It is noted that the record of proceedings contains several documents which refer only to the applicant's mother or father and do not address the applicant's residency. These documents are not probative of the applicant's residency and therefore, will be accorded no evidentiary weight.

Furthermore, while an applicant's failure to provide evidence other than affidavits shall not be the sole basis for finding that he or she failed to meet the continuous residency requirements, an application which is lacking in contemporaneous documentation cannot be deemed approvable if considerable periods of claimed continuous residence rely entirely on affidavits which are considerably lacking in certain basic and necessary information. As discussed above, the affiants' statements are significantly lacking in detail and do not establish that the affiants actually had personal knowledge of the events and circumstances of the applicant's residence in the United States. Few of the affiants provided much relevant information beyond acknowledging that they met the applicant in 1981.

As is stated above, 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). The applicant has been given the opportunity to satisfy his burden of proof with a broad range of evidence pursuant to 8 C.F.R. § 245a.2(d)(3).

The absence of sufficiently detailed 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. Given the applicant's reliance upon affidavits with minimal probative value, it is concluded that he 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--*, *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.