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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
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[REDACTED]

FILE:

Office: CHICAGO

Date:

SEP 08 2009

MSC-06 095 17438

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.

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 in Chicago, Illinois. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, a native of India who claims to have lived in the United States since before January 1, 1982, 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 on January 3, 2006. 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 director did not properly evaluate the documents submitted by the applicant in support of his application. In counsel's view, the evidence of record is sufficient to establish that the applicant meets the continuous residence requirement for the requisite period.

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 AAO determines that the applicant has not met his burden.

The record reflects that the applicant has provided conflicting information and documentation regarding his entry into the United States and his continuous residence in the country through the requisite period. The record reflects that the applicant submitted three separate Forms I-687 – two applications were dated in 1990s and the current application dated in 2006. On the application dated June 29, 1990 (completed under A93 186 249), the applicant indicated that he

first entered the United States on December 2, 1980. The applicant provided the following as his addresses and employment information in the United States during the requisite period:

Addresses:

- [REDACTED] from February 1981 to January 1990; and
- [REDACTED] from January 1990.

Employment:

- [REDACTED], from December 1980 to January 1990; and
- D.S. Laie, farm work from January 1990.

On the Form I-687 (under [REDACTED] dated July 25, 1990, which the applicant filed in 1990, the applicant indicated that he first entered the United States in 1981, and provided the following as his residential addresses and employment information in the United States during the requisite period:

Addresses:

- [REDACTED], from December 1981 to February 1984;
- [REDACTED] from March 1984 to December 1987; and
- [REDACTED] from January 1988.

Employment:

- Self-Employed, selling flowers and newspapers in Flushing, New York, from December 1981 to February 1984;
- Gandhi Restaurant, Costa Mesa, California, helper, from March 1984 to December 1987; and
- Self-employed, selling flowers in California, from January 1988.

On the current Form I-687 which the applicant filed in January 2006, the applicant provided the following as his residential addresses and employment in the United States during the requisite period:

Addresses:

- [REDACTED] from December 1981 to January 1982;
- [REDACTED] from January 1982 to January 1984;
- [REDACTED] from January 1984 to January 1987;

[REDACTED] from January 1988 to January 1990; and [REDACTED] from January 1990 to January 1992.

The three forms discussed above clearly show that the applicant has submitted conflicting statement and information regarding his initial entry into the United States (1980 or 1981) and his continuous unlawful residence in the country, and calls into serious question the credibility of the documents in the record attesting to the applicant's continuous residence in the United States and the veracity of the applicant's claim that he entered the United States before January 1, 1982 and resided continuously in the country through the requisite period.

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 without competent objective evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *See id.*

As noted above, the applicant has provided contradictory testimony and information in support of his application. The applicant has failed to submit any objective evidence to explain or justify the discrepancies and contradictions in the record. Therefore, the reliability of the remaining evidence consisting of affidavits – from individuals who claim to have resided with or otherwise known the applicant in the United States during the 1980s, a copy of a two-year residential lease agreement attesting to the applicant's residence in Brooklyn, New York, from 1982 to 1984, as well as photocopied envelopes with illegible postmark dates – is suspect and non-substantive. Thus, it must be concluded that the applicant has failed to establish that he continuously resided in the United States in an unlawful status during the requisite period.

For example, the copy of a two-year residential lease agreement dated June 1, 1982, between [REDACTED] as the landlord and the applicant for [REDACTED] New York, beginning on June 1, 1982 and ending on May 31, 1984, does not appear to be genuine. Although the lease was signed on June 1, 1982, it was not notarized until May 14, 2003. The lease is not supplemented by copies of rent receipts, utility bills or other documents addressed to the applicant at the address to show that the applicant actually lived at the property during the years indicated. Of more importance is the fact that the lease agreement is in conflict with the addresses indicated by the applicant on his Forms I-687 dated in the 1990s, as his residence during the same period. For all the reasons discussed above, the lease agreement has little probative value. It is not persuasive evidence of the applicant's continuous residence in the United States during the requisite period.

The record includes (1) an undated letter from the president (name not identified) of The Sikh Cultural Society, Inc. in Richmond Hill, New York, stating that the applicant served the temple from 1982 to 1984; and (2) a letter from Sikh Temple of the Pacific Coast, Selma, California, dated May 22, 2003, stating that the applicant served the temple from 1986 to 1989. It is noted that the signatory of this letter is not identified.

The letters identified above do not comport with the regulatory requirements of 8 C.F.R. § 245a.2(d)(3)(v), which specifies that attestations by religious and related organizations (A) identify the applicant by name, (B) be signed by an official (whose title is shown), (C) show inclusive dates of membership, (D) state the address where the applicant resided during the membership period, (E) include the organization seal impressed on the letter or the letterhead of the organization, (F) establish how the author knows the applicant, and (G) establish the origin of the information about the applicant. The letters did not indicate whether the applicant was a member of the organizations and if so, the specific dates of his membership, did not indicate where the applicant lived during the period of association with the organizations or at any other time during the 1980s, did not indicate how and when the authors met the applicant, and did not indicate whether their information about the applicant was based on their personal knowledge, the organizational records, or hearsay. The letters did not provide any information about the applicant's residence or whereabouts prior to September 1982. Since the letters do not comply with sub-parts (B), (C), (D), (F), and (G) of 8 C.F.R. § 245a.2(d)(3)(v), the AAO concludes that the letters have little probative value. They are not persuasive evidence of the applicant's continuous residence in the United States from before January 1, 1982 through the requisite period for legalization.

As for the letters and affidavits in the record from acquaintances who claim to have resided with or otherwise known the applicant during the 1980s, they all have minimalist formats with little personal input by the affiants. Considering the length of time they claim to have known the applicant in the United States – in most cases since 1981 – the authors provided very few details about the applicant's life in the United States, such as where he worked, and the nature and extent of their interaction with him over the years. The letters and affidavits are not accompanied by any documentary evidence – such as photographs, letters, and the like – of the authors' personal relationships with the applicant in the United States during the 1980s. Additionally, the affidavit from [REDACTED] stating that he lived with the applicant at [REDACTED] from 1987 to 1989, is contrary to the information provided by the applicant about his residential address on the three Forms I-687 he completed. As previously stated, doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *See Matter of Ho, id.* For all the reasons discussed above, the AAO finds that the affidavits have little probative value. They are not persuasive evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through the requisite period.

Upon a *de novo* review of all of the evidence in the record, the AAO agrees with the director that the evidence submitted by the applicant has not established that he is eligible for the benefit sought.

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 on this basis.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.