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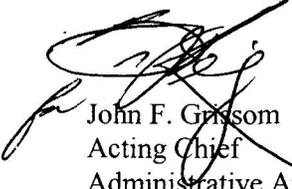
IN RE: Applicant:

APPLICATION: Application for Temporary Resident Status under 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.


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) on 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) on February 17, 2004 (CSS/Newman Settlement Agreements), was denied by the director in New York City. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The director denied the application on the ground that the applicant failed to establish that he resided continuously in the United States in an unlawful status from before January 1, 1982 through the date of attempted filing during the original one-year application period for legalization that ended on May 4, 1988.

On appeal counsel asserts that the director did not give proper weight to the affidavits and other evidence submitted by the applicant.

An applicant for temporary resident status under section 245A of the Immigration and Nationality Act (the Act) must establish his or her entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status from before January 1, 1982 through the date the application is filed. See section 245A(a)(2) of the Act, 8 U.S.C. § 1255a(a)(2). The applicant must also establish his or her continuous physical presence in the United States since November 6, 1986. See 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. See 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 the regulation at 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 from May 5, 1987 to May 4, 1988. See CSS Settlement Agreement, paragraph 11 at page 6; Newman Settlement Agreement, paragraph 11 at page 10.

An applicant for temporary resident status has the burden to establish 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. See 8 C.F.R. § 245a.2(d)(5).

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 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.

The regulations provide an illustrative list of documents – which includes affidavits and “any other relevant document” – that an applicant may submit as evidence of continuous residence in the United States during the requisite period under section 245A of the Act. *See* 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The applicant, a native of India who claims to have lived in the United States since February 1981, filed his application for temporary resident status under section 245A of the Act (Form I-687), together with a Form I-687 Supplement, CSS/Newman (LULAC) Class Membership Worksheet, on April 14, 2005. At that time the record included the following documentary evidence of the applicant’s residence in the United States during the years 1981 to 1988, all of which had been submitted in the 1990s:

- A series of six photocopied merchandise receipts from various businesses in New York and New Jersey, dated April 20, 1983, September 11, 1986, March 10, 1987, March 12, 1987, June 6, 1987, and April 29, 1988.

An airplane ticket, dated in September 1987, for travel between New York and Delhi, India.

- An affidavit by _____ a resident of Rego Park, New York, dated May 29, 1991, stating that he had known the applicant since 1983 when he lived on _____ in Jersey City, that he accompanied the applicant to the airport on September 10, 1987, for a flight to India to attend his father’s funeral, and that the applicant returned to the United States on October 2, 1988.

A notarized letter by _____ a resident of Jackson Heights, New York, dated July 15, 1994, stating that he drove the applicant to JFK Airport on September 10, 1987 for a flight to India.

- Identically formatted affidavits by _____ a resident of Long Island City, New York, and _____, a resident of Jersey City, New Jersey, dated

October 2 and December 26, 1990, stating that the applicant resided with them and shared rent payments in the years 1985-1987 and 1983-1984, respectively.

- An affidavit by [REDACTED] a resident of Wrightsville, Pennsylvania, dated February 15, 1990, stating that the applicant worked at his restaurant in Lancaster, Pennsylvania, in 1981, and resided in his home at [REDACTED] in Columbia, Pennsylvania.
- A notarized letter from [REDACTED], vice president of 7 Brothers Construction Corp. in New York City, dated September 14, 1990, stating that the applicant was a good friend and business colleague, describing him as “a first class engineer” with whom he had worked on various projects during the previous eight years.
- An affidavit by [REDACTED], owner of a restaurant and bar in New York City, dated September 8, 1994, stating that he had known the applicant since 1982, that the applicant often came to his restaurant for lunch or dinner, and that he also provided help on weekends and holidays.

On July 3, 2007 the director issued a Notice of Intent to Deny (NOID). The director reviewed the documentation of record, noted that some of it looked fraudulent, and indicated that the affidavits also contained contradictions and generally lacked evidentiary weight. The applicant was granted 30 days to respond.

The applicant replied to the NOID with a letter offering explanations for some of the evidentiary shortcomings cited by the director. Some additional affidavits and letters were submitted, including:

- A letter from [REDACTED] head priest of the Sikh Center of New York in Flushing, dated June 7, 2003, stating that the applicant had been coming to the Sikh temple continuously since 1985, especially for Sunday services, and that he participated in many activities.
- A letter from [REDACTED] priest of the Sikh Cultural Society in Richmond Hill, New York, dated July 25, 2007, stating that the applicant had been coming to the congregation for a long time and was very active.
- Another affidavit by [REDACTED] dated July 26, 2007, with the same information he had given in his earlier affidavit in 1990.
- Two affidavits by [REDACTED] dated July 26, 2007, one or both of whom appear to be the same person who submitted a previous affidavit in 1991, stating that he knew the applicant had been residing in the United States since 1981 or 1982, and listing a series of four addresses for the years 1981-1992.

- Four new affidavits or letters from residents of the New York metropolitan area, dated from March 24, 2005 to July 26, 2007, stating that they had known the applicant in the United States since 1981, 1985, 1988, and 1990, respectively.

On August 10, 2007 the director issued a Notice of Decision denying the application. The information and documentation submitted in response to the NOID, the director indicated, were insufficient to overcome the grounds for denial. The director determined that the evidence of record failed to establish the applicant's continuous residence in the United States during the requisite period to qualify for temporary resident status under the Act.

On appeal counsel asserts that the director did not give due weight to the affidavits and associated evidence submitted by the applicant.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he resided continuously in the United States in an unlawful status from before January 1, 1982 through the date he attempted to file a Form I-687 during the original one-year application period for legalization that ended on May 4, 1988. The AAO determines that he has not.

The six photocopied merchandise receipts dated between 1983 and 1988 are of doubtful authenticity. All of the sales information is handwritten, and there is no date stamp or other official marking on any of the receipts to validate them. Three of the six receipts do not even identify the customer. Finally, none of the receipts is an original document. For all of these reasons, the AAO determines that the photocopied receipts have no probative value as evidence of the applicant's residence in the United States during the 1980s.

As for the airline ticket dated in 1987, even if the AAO overlooked the fraud indicators discussed by the director, the ticket would not represent persuasive evidence that the applicant was residing in the United States at that time, as opposed to visiting. The ticket does not identify any U.S. address for the applicant. Thus, the airline ticket has little probative value as evidence of the applicant's residence in the United States in 1987, much less during earlier years.

Two affiants, [REDACTED] and [REDACTED], indicate that the applicant worked in their restaurants, which appears to conflict with [REDACTED] description of the applicant as "a first

class engineer.” The applicant has not explained the dissimilarity of this work experience. In any event, the regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant’s employment must (1) provide the applicant’s address at the time of employment; (2) identify the exact period of employment; (3) show periods of layoff; (4) state the applicant’s duties; (5) declare whether the information was taken from company records; and (6) identify the location of such company records and state whether such records are accessible, or in the alternative state the reason why such records are unavailable.

The documents from the three individuals identified above do not meet all of these criteria. None identified the exact period of the applicant’s employment, and none specified the applicant’s duties. In addition, none of the documents stated whether the information about the applicant was taken from company records and whether such records are available for review. Nor did [REDACTED] and [REDACTED] provide the applicant’s address at the time of employment. Due to the infirmities discussed above, the documents from [REDACTED], and [REDACTED] have little or no probative value as evidence of the applicant’s continuous residence in the United States during the years 1981-1988.

With regard to the letters from the Sikh priests, [REDACTED] and [REDACTED], the regulation at 8 C.F.R. § 245a.4(b)(iv)(E) provides that attestations by churches, unions, and other organizations as to the applicant’s residence must (1) identify the applicant by name; (2) be signed by an official whose title is shown; (3) show inclusive dates of membership; (4) state the address where the applicant resided during the membership period; (5) include the seal of the church impressed on the letter or the letterhead of the church if it has letterhead stationery; (6) establish how the church official knows the applicant; and (7) establish the origin of the information about the applicant.

The letters from the Sikh priests do not meet all of these criteria. In particular, they do not indicate exactly when the applicant’s membership began (one states vaguely that he had been coming to the temple since 1985, while the other said only that the applicant had been coming for a long time”) and they do not state where the applicant lived during all of his membership period, especially during the 1980s. Furthermore, neither letter establishes how the priests know the applicant, such as the date and circumstances of their meeting and the extent of their interaction over the years. Nor do the letters establish the origin of the priests’ information about the applicant, such as whether it comes from the organization’s records or is based on the hearsay of others. For all of these reasons, the letters from the two Sikh priests have no probative value as evidence of the applicant’s continuous unlawful residence in the United States during the years 1981-1988.

The remaining affidavits and letters in the record are from individuals who claim to have known the applicant in the New York City area during the 1980s. A number of these individuals do not claim to have known the applicant as early as 1981. Rather, they claim to have met him in later years. Others claim to have interacted with the applicant at times during the 1980s – such as sharing a residence for a year or two or riding together to JFK Airport – but say nothing about

the rest of the decade. Only a couple of affiants clearly claim to have known the applicant in the United States since 1981, but they provide almost no information about the applicant during subsequent years up to 1988. Thus, the affidavits and letters are alike in their paucity of detail. Even viewed as a whole, they provide little information about the applicant's life in the United States during the 1980s, or the nature and extent of the authors' interaction with the applicant over the years. Furthermore, none of the authors provided any documentary evidence – such as photographs, letters, and the like – of their personal relationship with the applicant in the United States during the 1980s. In view of these substantive shortcomings, the AAO finds that the affidavits and letters have little probative value. They are not persuasive evidence of the applicant's continuous unlawful residence in the United States during the years 1981-1988.

Based on the foregoing analysis of the evidence, the AAO determines that the applicant has failed to establish that he resided continuously in the United States in an unlawful status from before January 1, 1982 through the date he attempted to file a Form I-687 during the original one-year application period for legalization that ended on May 4, 1988. Accordingly, the applicant is ineligible for temporary resident status under section 245A of the Act.

The appeal will be dismissed, and the application denied.

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