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



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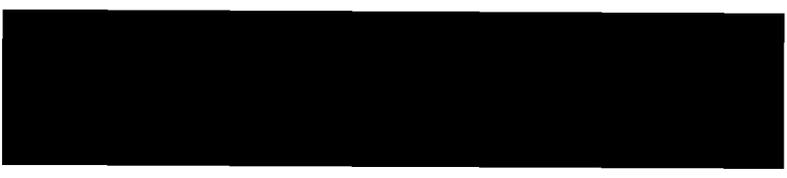
Office: SAN FRANCISCO

Date: FEB 02 2010

IN RE: Applicant: [Redacted]

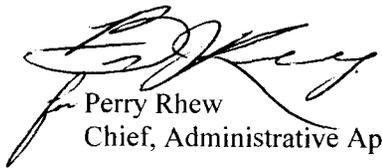
APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C § 1255a.

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the National Benefits Center. If your appeal was sustained, or if the matter 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.


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, or *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, San Francisco, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined that the applicant had not established that he resided in the United States in a continuous unlawful status from before January 1, 1982 through the date of attempted filing during the original one-year application period that ended on May 4, 1988.

On appeal, counsel for the applicant asserts that the director abused discretion in denying the application, and that the applicant has submitted sufficient evidence to establish his eligibility for Temporary Resident Status. Counsel does not submit additional evidence on appeal.

An applicant for temporary resident status – under section 245A of the Immigration and Nationality Act (the Act) – 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. *See* 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. *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 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. *See* 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.* at 80. 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, 431 (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.

Although the regulations provide an illustrative list of contemporaneous documents that an applicant may submit, the list also permits the submission of affidavits and any other relevant document. *See* 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant’s employment must: provide the applicant’s address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant’s duties; declare whether the information was taken from company records; and 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 applicant is a native of India who claims to have resided in the United States since November 1981. He filed an 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 May 5, 2005.

In the Notice of Decision, dated January 22, 2007, the director denied the instant application because the applicant failed to establish the requisite continuous residence.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he continuously resided 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 that ended on May 4, 1988. After reviewing the entire record, the AAO determines that he has not.

The evidence provided by the applicant consists of the following:

Letters of Employment

- 1) The applicant submitted a letter of employment from [REDACTED] of [REDACTED], located at [REDACTED] stating that the applicant had been employed “off and on” as a Farm Worker, from 1982 to 1985. The letter, however, does not indicate when in 1982 the seasonal employment began; during what periods of the year the applicant was employed; whether he was employed every year from 1982 through 1985; where the applicant was employed; and, when the employment ended in 1985.
- 2) The applicant submitted a letter of employment from [REDACTED] located at [REDACTED], stating that the applicant had been employed as an Agricultural Worker from August 1985 to 1989. The letter, however, is not probative as the name and capacity of the author is not discernable. The letter also does not provide details, such as to indicate the location of the farms where the applicant had been employed, whether the agricultural work was seasonal, and during what seasons the applicant was employed.

It is noted that the letters failed to provide the applicant’s address at the time of employment. Also, the letters failed to show periods of layoff, declare whether the information was taken from company records, and 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 as required under 8 C.F.R. § 245a.2(d)(3)(i). The letters, therefore, are not probative as they do not conform to the regulatory requirements.

Affidavits and letters

- 1) Affidavits from [REDACTED] attesting to having known the applicant to have resided in the United States since November 1981. [REDACTED] also attests that he and the applicant are friends; that he met the applicant in Stockton, California; that he has occasionally helped the applicant; and, that they kept in touch and saw each other a few times. However, the affiant does not provide details, such as to indicate how he dates his acquaintance with the applicant in the United States, how frequently, and under what circumstances he and the applicant had contact; and, whether they maintained contact throughout the requisite period.
- 2) Two affidavits from [REDACTED] and one each from [REDACTED] and [REDACTED]. [REDACTED] attests that he first met the applicant at a religious function in Stockton, California, in December 1981; [REDACTED] attests that the applicant arrived in California at the “end of 1981” and has since lived in California; [REDACTED] attests that he met the applicant at a Sikh Temple in Yuba City in December 1981; and, [REDACTED] attests that he first met the applicant in 1986, and that the applicant has since been residing in the United States. The affiants also attest that since then they have periodically met the applicant at events, such as religious and social gatherings. [REDACTED] also attests that he has assisted the applicant financially “from time to time.” However, the affiants do not provide details, such as to indicate how they date their acquaintance with the applicant in the United States, how frequently, and under what circumstances they had

contact with the applicant; and, whether and how they maintained contact throughout the requisite period.

- 3) An affidavit from [REDACTED] attesting that the applicant, his nephew, came to the United States on November 11, 1987, and visited his family. The applicant, also attests that he first met the applicant at a religious function in Stockton, California, in December 1981. [REDACTED] also attests that since then he has met the applicant at many religious and social gatherings; and, that he has assisted the applicant financially "from time to time." However, the affiant does not provide details, such as to indicate how he dates his acquaintance with the applicant in the United States, how frequently, and under what circumstances he and the applicant had contact; and, whether and how they maintained contact throughout the requisite period. The affiant also does not indicate whether the applicant has been a continuous resident since 1981.

The applicant also submitted a cash receipt, dated Sept 15, 1984, from [REDACTED] located in Berkeley, California; and a receipt, dated December 31, 1981, from [REDACTED] San Francisco Bay Area, California. The receipts, however, do not establish the applicant's continuous residence prior to or after the receipt dates.

The record contains a letter from [REDACTED] San Francisco Bay Area, California, stating that the applicant has been a member since 1984. It is noted that the letter does not indicate when in 1984 the applicant's membership began. The regulation at 8 C.F.R. § 245a.2(d)(3)(v) 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 letter from [REDACTED], San Francisco Bay Area, does not comply with the above cited regulations because it does not: state the address where the applicant resided during attendance ...(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, that attendance (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.

Contrary to counsel's assertion, the applicant has failed to submit sufficient evidence to establish his continuous residence. As noted above, the evidence provided, including affidavits and letters, lack essential details. As such, the evidence provided is insufficient to establish the requisite continuous residence. The applicant has not submitted any additional evidence in support of his claim that he entered the United States prior to January 1, 1982, and he had resided continuously in the United States during the entire requisite period.

As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. 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.

Based on the foregoing analysis of the evidence, the AAO concludes that the applicant has failed to establish his continuous unlawful residence in the United States throughout the requisite period. Thus, the record does not establish that the applicant entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from that date through the date he attempted to file a Form I-687 during the original one-year application period that ended on May 4, 1988. Accordingly, the applicant is ineligible for temporary resident status under section 245A(a)(2) the Act.

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