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U.S. Citizenship and Immigration Services
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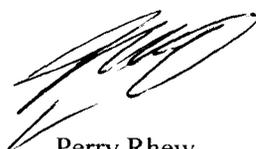
FILE: [Redacted] Office: SAN FRANCISCO Date: FEB 04 2010
MSC 04 286 10014

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.


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, San Francisco. The decision is now before the Administrative Appeals Office 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, and a Form I-687 Supplement, CSS/Newman (LULAC) Class Membership Worksheet. The director denied the application because the applicant did not establish that he continuously resided in the United States for the duration of the requisite period.

On appeal, counsel states the director erred in finding the applicant perjured himself on his application and during his interview. Counsel argues the director also erred in finding that he did not provide any documents to substantiate his employment, continuous residence, or continuous physical presence. Counsel further states the applicant has been married since 1977 to [REDACTED] and that he and his wife have two children who were born in India.

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)(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. 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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her 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.* 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 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, 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 request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, to deny the application.

The pertinent evidence in the record is described below.

1. Notarized statements from [REDACTED] and [REDACTED] who state the applicant has resided in the United States since 1981.
2. A notarized statement from [REDACTED] who states the applicant has resided in the United States since 1983.
3. A notarized statement from [REDACTED] who states the applicant has resided in the United States since 1988.
4. A letter from [REDACTED] in Fremont, California, who states the applicant was his patient in the 1980’s up to 1987 and then again since June 8, 2001.
5. A copy of the applicant’s 1981 IRS Form W-2, Wage and Tax Statement, from [REDACTED] in Union City, California.
6. A notarized employment verification letter from [REDACTED] who states the applicant was employed at his restaurant ‘[REDACTED]’ from September 1981 to December 1988.
7. A copy of the applicant’s California driver’s license issued April 29, 1981.
8. A copy of the applicant’s GEMCO Life Membership card dated March 20, 1983.
9. A copy of the applicant’s Price Club card showing him as a member since March 1984.

10. The applicant's State of Nevada marriage certificate showing he married [REDACTED] on May 7, 1983 in Reno, Nevada.
11. The applicant's State of Nevada marriage certificate showing he married [REDACTED] on February 19, 1984 in Reno, Nevada.
12. A letter from [REDACTED] of Gurdwara Sahib in San Francisco, California, who states the applicant has been a member of the organization's congregation since 1986.

The individuals providing statements (Items # 1 through # 3 above) claim to have known the applicant for a substantial length of time, in this case since 1981. However, their statements are not accompanied by any documentary evidence such as photographs, letters or other documents establishing the affiants' personal relationships with the applicant in the United States during the 1980s. In view of these substantive shortcomings, the AAO finds that the statements 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 date he attempted to file a Form I-687 or was caused not to timely file during the original filing period from May 5, 1987 ending on May 4, 1988. [REDACTED] (Item # 4) indicates the applicant was his patient in the 1980's but the applicant provides no evidence to substantiate his doctor's statement nor does the doctor specify in which years he attended the applicant from 1980 to 1986. The applicant's 1981 IRS Form W-2, Wage and Tax Statement, from [REDACTED] in Union City, California, (Item # 5) is of little value in this proceeding because, although it carries the applicant's name, it does not contain essential identifying information including his social security number and his address and ZIP code. Additionally, the employment verification letter (Item # 6) does not provide the applicant's address at the time of employment and identify the location of company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable as is required of employment letters by 8 C.F.R. § 245a.2(d)(3)(i). The applicant's signature on his driver's license (Item # 7) is markedly different from the applicant's signature on other documents that he submitted for the record, including his current Form I-687.

On his current Form I-687, the applicant stated that he was employed at the [REDACTED] in Union City, California from September 1981 to December 1988. However, on his Form I-687 that he signed on February 12, 1990, he stated that he was self employed as a handyman from April 1981 to February 12, 1990. On June 7, 1984, [REDACTED] filed a Form I-130, Petition to Classify Status of Alien Relative for Issuance of Immigrant Visa, in behalf of the applicant as her spouse. She stated that the applicant was employed by [REDACTED] in Union City, California, and that he had begun that employment in March 1983. On his Form I-687, the applicant was asked to list any affiliations or associations that he had in the United States such as clubs, organizations, churches unions or businesses. He did not list [REDACTED] in San Francisco, California. (Item # 12).

It is noted that on his Form I-690, Application for Waiver of Grounds of Excludability, the applicant acknowledged that his divorce from [REDACTED] who he married on December 11, 1977 in India “was fake and I married [REDACTED] to obtain a green card.” (Items # 10 and # 11).

Doubt cast on any aspect of the applicant’s proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. Further, the applicant must resolve any inconsistencies in the record with competent, independent, objective evidence. Attempts to explain or reconcile such inconsistencies, absent competent objective evidence sufficient to demonstrate where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). These inconsistencies cast doubt not only on the evidence containing the conflicts, but on all of the applicant’s evidence and all of his assertions.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate entry into the United States prior to January 1, 1982, and continuous residence during the requisite period. The applicant’s asserted employment, affiliation and residential histories on his Form I-687 are accompanied by inconsistent evidence.

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 its amenability to verification. Given the absence of credible supporting documentation, the applicant has failed to meet his burden of proof and failed to establish continuous residence in an unlawful status in the United States during the requisite period. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act. The application was correctly denied on this basis, which has not been overcome on appeal. Consequently, the director's decision to deny the application is affirmed.

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