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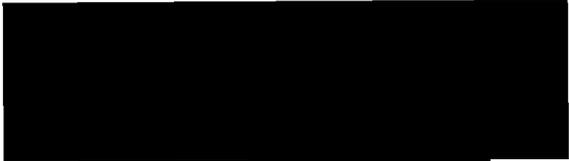
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



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FILE: [Redacted]  
MSC-05-364-10783

Office: LOS ANGELES

Date: MAR 16 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. 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.

*Elizabeth McCormack*

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, Los Angeles. 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 determined 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. The director noted the inconsistencies and contradictions in the applicant's statements and testimony concerning his absence from the United States during the requisite period. The director also noted that the affidavits submitted on behalf of the applicant were not credible and insufficient to support the applicant's eligibility claim. The director denied the application, finding that the applicant had not met his burden of proof and was, therefore, not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, counsel asserts that the director misinterpreted evidence in the record and that the applicant has submitted affidavits that corroborate his testimony and application. The applicant requested a copy of the record of proceedings through the Freedom of Information Act (FOIA) and the request was satisfied on December 7, 2009 (NRC2009049456).

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. 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 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 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.

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

Counsel asserts on appeal that the applicant was absent from the United States from December 30, 1987 to February 3, 1988, and that it was conceivable that he was able to sire a child that was born in India on September 12, 1988 during that absence. Counsel asserts that the director erred in determining that the applicant's child's date of birth was December 9, 1986. Counsel asserts that the date of the applicant's marriage in India was September 12, 1986. Counsel also asserts that the applicant met with his wife in Canada in December 1987 and that their child was born thereafter. The applicant submits copies of his child's Indian birth certificate and his Indian marriage certificate (with English translations) as evidence on appeal. Based upon the evidence submitted on appeal, it appears that the applicant's child was born on September 12, 1988, thus making it possible for him to have sired the child during his absence from the United States from December 30, 1987 to February 3, 1988. Therefore, the director's decision with respect to that

issue is withdrawn. However, the applicant failed to indicate on his previous or current Form I-687 that he was absent from the United States on or about September 12, 1986, the date of his marriage in India. In addition, the applicant fails to overcome the director's decision with respect to the inconsistencies in the record regarding his other absences from the United States. On his previous Form I-687 the applicant indicated that he was absent from the United States once, and on his current Form I-687 he indicated that he was absent from the United States on two separate occasions. It is also noted that on his Form G-325, Biographic Information signed and dated 1999 and 2005, the applicant stated that he resided at [REDACTED] in Punjab, India from December 1960 through September 1989. 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. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

The applicant submitted a photocopy of his Social Security Statement listing his earnings from 1990 through 2000. The statement does not list any earnings for the applicant during the requisite period and is therefore, insufficient to demonstrate the applicant's residence in the United States prior to January 1, 1982, and throughout the requisite period.

The applicant submitted the following employment affidavits as evidence:

- An affidavit from [REDACTED] who stated that he hired the applicant to work as a farm laborer during the years 1981, 1982, and 1983.
- Two affidavits from [REDACTED] who stated in one that he has known the applicant since 1984 and that the applicant resided at [REDACTED] in Porterville, California from March 1985 to 1990. In the second affidavit [REDACTED] states that he hired the applicant to work as a picker and farm laborer at [REDACTED] from March 1986 through July 1989.

The statements made by [REDACTED] are internally inconsistent and are inconsistent with the applicant's Form G-325, Biographic Information dated July 29, 1991, where he stated under penalty of perjury that he was employed as a cashier in Oxnard, California from July 1986 through November 1988. In addition, the employment letters do not conform to regulatory standards for attestations by employers. Specifically, the letters do not specify the address(es) where the applicant resided throughout the claimed employment period, or the exact dates of employment or layoffs. 8 C.F.R. § 245a.2(d)(3)(i). The affiants fail to indicate whether the employment information was taken from company records. Neither has the availability of the records for inspection been clarified. 8 C.F.R. § 245a.2(d)(3)(i).

The applicant submitted the following evidence:

- An affidavit from [REDACTED] who states that he is the applicant's brother and that he resides in Canada. He further stated that he knows the applicant came to the United States in March 1981, and that the applicant visited with him in Canada on several occasions.
- An affiant from [REDACTED] who stated that he has known the applicant since April 1981.
- An affidavit from [REDACTED] who stated that she has known the applicant since November 1982.
- An affidavit from [REDACTED] who stated that he has known the applicant since 1983.
- Affidavits from [REDACTED] and [REDACTED] who stated that they have known the applicant since 1985.
- An affidavit from [REDACTED] who stated that he has known the applicant since June 1987.

The affiants fail to establish the applicant's continuous unlawful residence in the United States since before January 1, 1982. The statements do not supply enough details to lend credibility to an at least 24-year relationship with the applicant. For instance, the affiants do not indicate how they had personal knowledge of the applicant's presence in the United States. Further, the affiants do not provide information regarding the applicant's place of residence during the requisite period. It is noted that contrary to the applicant's brother's statement that the applicant visited him several times in Canada, the applicant stated that he made one trip to Canada in December of 1987. Given these deficiencies, these affidavits have minimal probative value in supporting the applicant's claims that he entered the United States prior to January 1, 1982 and resided in the United States throughout the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality; 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.

None of the affiants' statements provide concrete information, specific to the applicant and generated by the asserted associations with him, which would reflect and corroborate the extent of those associations and demonstrate that they were a sufficient basis for reliable knowledge about the applicant's residence during the time addressed in the affidavits. To be considered probative and credible, witness affidavits must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. Their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged. Upon review, the AAO finds that, individually and collectively, the affiants'

statements do not indicate that their assertions are probably true. Therefore, they have little probative value.

In the instant case, the applicant has failed to provide sufficient credible and probative evidence to establish his continuous unlawful residence in the United States since prior to January 1, 1982, and throughout the requisite period. He has failed to overcome the director's basis for denial.

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period and the contradictions and inconsistencies found in the record detract 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 inconsistencies found in the record and the applicant's reliance on evidence that has little probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States for the requisite period 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.