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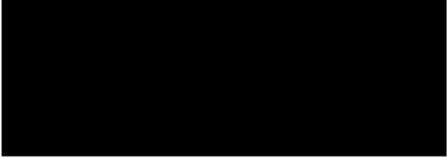
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

L1



DATE:

Office: SACRAMENTO

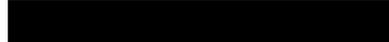
FILE:



MSC 06 101 19143

IN RE:

Applicant:



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.

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, Sacramento. 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). The director determined that the applicant failed to establish entry into the United States prior to January 1, 1982, and continuous residence in the United States during the requisite period. Specifically, the director noted inconsistencies regarding the applicant's place of residence during the statutory period.

On appeal, counsel asserts that the director applied an incorrect standard of proof and the decision should be reversed. Given the passage of time, counsel contends that the applicant has submitted the best evidence to reconcile the noted discrepancies. The AAO has reviewed all of the evidence and has made a *de novo* decision based on the record and the AAO's assessment of the credibility, relevance and probative value of the evidence.<sup>1</sup>

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 245(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).

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<sup>1</sup> The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

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.

The issue in this proceeding is whether the applicant established he: (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. The documentation that the applicant submits in support of his claim to have arrived in the United States before January 1982 and resided in an unlawful status during the requisite period consists of a copy of the applicant’s immunization record, a church letter, and declarations from five individuals claiming to know the applicant during the requisite period. The AAO has reviewed each document in its entirety to determine the applicant’s eligibility.

The record contains a copy of the applicant’s California School Immunization Record, reflecting that the applicant received vaccinations in 1981, 1982, 1983 and 1984. The document indicates that it is a January 8, 1990, summarized and transcribed record of the applicant’s immunizations; however, the document does not identify the original source for the summarized record of the applicant’s immunizations. The summarized record does not show where or by whom the immunizations were administered to the applicant. Given this, the document provides minimal probative value as evidence in support of the applicant’s claim.

The record contains a declaration from [REDACTED]. The declaration indicates that the applicant and his family have regularly attended services at the Sikh Temple from 1981 through

1993, and that the applicant attended during school days beginning in 1987 and 1988. The declaration does not conform to regulatory standards for letters from organizations as stated in 8 C.F.R. § 245a.2(d)(3)(v). The declaration fails to state the address where the applicant resided during membership period and establish the origin of the information being attested to. Given the lack of details, the declaration provides minimal probative value as evidence in support of the applicant's claim.

The declarations from [REDACTED] (applicant's father), [REDACTED] (applicant's mother), and [REDACTED] state that the applicant entered the United States in 1981 and continuously resided in the United States during the requisite period. The declarations fail to establish the applicant's continuous unlawful residence in the United States for the duration of 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. The declarations are inconsistent with other documentation in the record.

The statements fail to 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 have 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 statements must do more than simply state that a declarant 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 together, the witness statements do not indicate that their assertions are probably true. Therefore, they have minimal probative value and will be given little weight as evidence in support of the applicant's claim of continuous residence in the United States during the requisite period.

The record includes a Form G-325A, Biographic Information, dated December 15, 1999, signed by the applicant under severe penalties for knowingly and willfully falsifying or concealing a material fact. On his Form G-325A, the applicant indicated that his last address outside of the United States for more than one year was an address in India, where he resided from February 1981 to August 1987. This information directly contradicts the applicant's claim to have resided in the United States throughout 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 unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The record contains no independent objective evidence to explain the above inconsistency.

On appeal, counsel submits a declaration from [REDACTED] the applicant's attorney in 1999. [REDACTED] states that the relevant question was commonly understood to be considered the alien's foreign address abroad, even if the alien's residence was in the United States. The AAO finds this assertion unpersuasive. However, even if counsel's assertion is taken at face, counsel failed to submit independent, objective evidence to point to the truth of where the applicant was physically residing during the period in question.

It is also noted that the record contains discrepancies regarding [REDACTED] passport. There is only one departure stamp in the passport, indicating a departure from India on September 20, 1989. The record contains a declaration from [REDACTED] attempting to reconcile the discrepancy. On appeal, counsel contends that [REDACTED] own declaration is the best evidence available to reconcile any inconsistencies after passage of so much time. However, the AAO finds that the record lack sufficient documentation in support [REDACTED] declaration. No independent, objective evidence was submitted to support the assertions in her declaration.

The documents submitted in support of the applicant's claim have been found to be inconsistent or to have minimal probative value as evidence of the applicant's residence and presence in the United States for the requisite period. Therefore, they will be given little weight as evidence in support of the applicant's claim of continuous residence in the United States during the requisite period.

Based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that he continuously resided in an unlawful status in the United States from before January 1, 1982 through 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.