

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



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Date:

Office: LOS ANGELES

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**DEC 19 2012**

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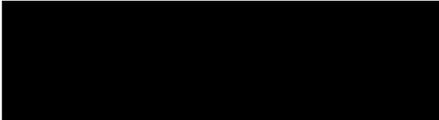
Applicant:



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.

Ron Rosenberg  
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) 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 of the Los Angeles office, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the I-687 application, finding that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements because he 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.<sup>1</sup>

On appeal, counsel asserts that the evidence which the applicant previously submitted establishes by a preponderance of the evidence that he continuously resided in the United States in an unlawful status for the duration of the requisite period, and that the director erroneously failed to consider the evidence in its totality.<sup>2</sup> The applicant has submitted two further witness statements on appeal. 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>3</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 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).

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<sup>1</sup>The I-687 application was initially denied on May 30, 2007. Although the director did not deny the I-687 application on the basis of class membership, the applicant's pending appeal to the Special Master *not* relating to class membership was forwarded to the Special Master, who adjudicated it as an appeal of a denial of class membership. On January 3, 2012 the Special Master granted the applicant's appeal, finding that the applicant met the definition of class member because the evidence in the record supported the applicant's being physically present in the United States for the requisite period. The Special Master reopened the I-687 application. On March 27, 2012, the director again denied the I-687 application. The AAO notes that the Special Master's determination regarding the applicant's eligibility for CSS Class Membership is separate from the determination of the applicant's eligibility for temporary resident status, which requires the applicant to additionally establish that he resided continuously in the United States throughout the requisite period. In addition, a determination that an applicant is a class member is not binding in any manner for the purposes of a decision on the merits of the application for temporary residence, which shall be conducted *de novo*.

<sup>2</sup>The AAO notes that the applicant's FOIA requests, numbers [REDACTED] and [REDACTED], were processed on July 19, 2000, April 3, 2009 and October 3, 2012, respectively.

<sup>3</sup>The AAO conducts appellate review on a *de novo* basis. The AAO's *de novo* authority is well recognized by the federal courts. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

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. 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 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. 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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's 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.* 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. See 8 C.F.R. § 245a.2(d)(6). The weight to be given any affidavit depends on the totality of the circumstances, and a number of factors must be considered. More weight will be given to an affidavit in which the affiant indicates personal knowledge of the applicant's whereabouts during the time period in question rather than a fill-in-the-blank affidavit that provides generic information. The regulations provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment or attestations by churches or other organizations. 8 C.F.R. §§ 245a.2(d)(3)(i) and (v).

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 or petitioner 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 or petition. 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. *Matter of Ho*, 19 I & N Dec. 582, 591-592 (BIA).

The issue in this proceeding is whether the applicant has established that he (1) entered the United States before January 1, 1982 and (2) has continuously resided in the United States in an unlawful status throughout 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 lived in an unlawful status during the requisite period consists of witness statements and additional documents. The AAO has reviewed each document in its entirety to determine the applicant's eligibility; however, the AAO will not quote the witness statements in this decision. Some of the evidence submitted indicates that the applicant resided in the United States after May 4, 1988; however, because evidence of residence after May 4, 1988 is not probative of residence during the requisite time period, it shall not be discussed.

The record contains witness statements from [REDACTED] [REDACTED] [REDACTED] (the applicant's father), [REDACTED]

[REDACTED] The statements are general in nature, and state that the witnesses have knowledge of the applicant's residence in the United States for all, or a portion of, the requisite period.

Although the witnesses claim to have personal knowledge of the applicant's residence in the United States during the requisite period, the witness statements do not 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 in the United States during the requisite period.

For example, [REDACTED] submitted two statements. In a 2001 statement the applicant indicated he knew the applicant in India before he left for the United States in 1981, that he contacted the applicant when he arrived to the U.S. in 1984, and that the applicant worked for [REDACTED] from 1984 through the end of the requisite period. In a 2007 statement, [REDACTED] indicated he called the applicant in the United States from a telephone exchange in India about twice a month from 1981 to May 1984. He indicated that from May 1984 through the end of the requisite period he attended many religious events with the applicant and spoke with the applicant by telephone very often.

[REDACTED] [REDACTED] indicates the applicant lived with him on [REDACTED] California, from 1984 through the end of the requisite period.

[REDACTED] states he knows applicant continuously resided in the U.S. since 1981, "because he is a friend of mine and I have supported him during the various periods during 1981

and present.” The applicant indicated in a December 5, 2005 statement that he lived on [REDACTED] California with [REDACTED] and others. The applicant also indicated in a May 24, 2007 statement that [REDACTED] owned the house on [REDACTED] received the applicant’s rent payments and rented him a room which he shared with [REDACTED]. However, in his statement [REDACTED] does not mention having rented a room in his house to the applicant.<sup>4</sup>

The record contains two 2005 letters from [REDACTED] who states his office ledger system indicates the applicant was seen by him on two dates during the requisite period, October 17, 1986 and April 10, 1987, respectively. [REDACTED] has not submitted a copy of his office ledger system applicable to the applicant, or a copy of his treatment records pertaining to the applicant as evidence in support of his testimony. [REDACTED] also indicates in his statements that the applicant was seen by another doctor on seven dates from December 1981 to February 1986. Although [REDACTED] indicates he took over the other doctor’s patients, [REDACTED] does not state the basis for his knowledge of the applicant’s treatment dates that doctor. It is unclear whether he obtained this information from records maintained by the other doctor or from the applicant. Lacking relevant information, the witness’s statements regarding the applicant’s treatment dates from December 1981 to February 1986 fail to provide sufficient detail to constitute evidence in support of the applicant’s claim of continuous residence in the United States for that period.<sup>5</sup>

In a 2003 letter, [REDACTED] states the applicant was seen in his office on April 12, 1983, January 23, 1984 and January 31, 1984 for an upper respiratory infection, a laceration, and suture removal, respectively. It is unclear how [REDACTED] dates his treatment of the applicant, as he does not state the basis of his knowledge, and has not submitted a copy of any documents relating to the applicant’s treatment records as evidence in support of his testimony. Lacking relevant information, the witness’s statements regarding the applicant’s treatment dates in 1983 and 1984 have minimal probative value.

[REDACTED], the applicant’s father, states that the applicant has resided in the U.S. since 1981, with the exception of a five-week period when [REDACTED] was ill and the applicant visited him in India in September 1987. However, as [REDACTED] was living in India during the requisite period, he did not have first-hand knowledge of the applicant’s continuous residence in the U.S. for that period.<sup>5</sup>

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<sup>4</sup> In rebuttal to a notice of intent to deny (NOID) the I-687 application, the applicant indicated that [REDACTED] is now deceased.

<sup>5</sup> In the applicant’s May 24, 2007 statement, he asserts, “I have made numerous attempts to obtain copies of the pages of the appointment ledger corroborating the dates indicated in [REDACTED]’s letter on which I appeared in his medical office in the United States. [REDACTED]’s office has advised me that the records are in storage at another location and it will take perhaps another two weeks to obtain them.” The applicant has not provided evidence of the efforts he has made to obtain these documents, nor has he submitted the documents themselves.

<sup>6</sup> In a statement dated December 5, 2005, the applicant states he was absent from the U.S. for 28 days, while in a CSS class member worksheet signed by him on February 21, 1991, the applicant stated he was in India from September 5, 1987 to October 25, 1987, a total of 50 days. According to this version of the applicant’s testimony, he was outside the United States for 50 days during the requisite statutory period, and is thus ineligible for the benefit. An applicant may not have been absent for more than 45 days in a single period in order to maintain his

The record contains two statements from [REDACTED] who states the applicant visited him for several days in Everett, Washington in November 1981, before the applicant went to live in California.

[REDACTED] states he has known the applicant since the applicant first came to the U.S. in 1981. The applicant indicated in a December 5, 2005 statement that during the period from May 1984 through the end of the requisite period, he lived "sometimes" with [REDACTED]. However, [REDACTED] does not mention having lived with the applicant during the requisite period.

On appeal, the applicant submitted an affidavit from [REDACTED] who states he has known the applicant since they were "youngsters" in India. The witness states his family moved to live in the U.S. in 1979. He states the applicant visited him for several days at his home in Ceres, California in November 1981. He also states that applicant lived on [REDACTED] California "for the next three years or so" during which time the witness states he saw the applicant "on many occasions." He states in 1984 the applicant moved to Bakersfield. The witness estimates that he speaks with the applicant "perhaps ten times monthly from the time he moved away until the present," and has seen the applicant "at various social events in the U.S. from 1984 to the present."

On appeal, the applicant also submitted an affidavit from [REDACTED] who states he has known the applicant since they were students at the same school in India. The witness states he has lived in Yuba City, California since 1978. He states that in November or December 1981 he "reunited" with the applicant at a Sikh Temple in Stockton, California. He says that since reuniting in November or December 1981, he has seen the applicant regularly at social gatherings.

To be considered probative and credible, witness statements must do more than simply state that a witness knows an applicant and that the applicant has lived in the United States for a specific period. Their content must include sufficient detail from a claimed relationship to indicate that it probably did exist and that the witness, by virtue of that relationship, does have knowledge of the facts alleged.

For instance, witnesses [REDACTED] [REDACTED] [REDACTED] and [REDACTED] do not state how they date their initial meeting with the applicant in the United States

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continuous residence, unless he establishes that his prolonged absence was due to an emergent reason. 8 C.F.R. § 245a.2(h). The applicant has not alleged that his return to the U.S. was delayed due to an emergent reason.

Witnesses [REDACTED] do not state how frequently they had contact with the applicant during the requisite period.

Witnesses [REDACTED] do not specify social gatherings, other special occasions or social events when they saw and communicated with the applicant during the requisite period.

In addition, [REDACTED] do not state where the applicant resided during the requisite period.

Further, other than their own testimony, witnesses [REDACTED] do not provide the telephone numbers at which they contacted the applicant, or provide any documentation in support of their assertions that they were in regular telephone contact with the applicant.

For the reasons stated above, the witnesses do not provide sufficient details that would lend credence to their claimed knowledge of the applicant's residence in the United States during the requisite period. For these reasons the AAO finds that the witness statements do not indicate that their assertions are probably true.

[REDACTED] indicates the applicant enrolled in English classes "in 1986 to 1988," completing the school's Level 4 class, although she does not state the dates the applicant attended the school. [REDACTED] letter is some evidence in support of the applicant's residence in the U.S. for some part of 1986, 1987 and 1988.

In addition, the record contains an attestation letter from [REDACTED] President of the [REDACTED] Temple. The witness states he has known the applicant since 1984 from prayer meetings in private homes. However, the attestation does not meet the requirements set forth at 8 C.F.R. § 245a.2(d)(3)(v), which 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 the 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. This attestation fails to comply with the cited regulation. [REDACTED] does not state the address where the applicant resided during his association with [REDACTED] Sikh congregation. In addition, [REDACTED] does not establish the origin of the information being attested to; it is unclear whether he referred to his own recollection, or any records he or the Temple may have maintained. Therefore, this attestation is of minimal probative value.

The applicant has submitted copies of three rent receipts for a "room," dated December 7, 1981, March 5, 1982 and November 4, 1982, respectively. The rent receipts are signed by [REDACTED] who apparently was also the applicant's employer. In his December 5, 2005 statement, the applicant stated that from December 1981 to May 1984 he lived with other construction workers in a house his construction-company employer rented on [REDACTED]. In the instant I-687 application, for the period from December 1981 to April 1984, the applicant listed an identical address on [REDACTED] for both his residence and employment with [REDACTED] although the rent receipts do not list the address at which the applicant resided. The record contains no affidavit from [REDACTED] attesting to either the applicant's residency or his employment with [REDACTED] nor does the record does not contain other records from the [REDACTED] to corroborate the applicant's claim. Therefore, these rent receipts have minimal probative value.

The record contains copies of three rent receipts for a "room", dated June 3, 1984, April 4, 1985 and December 5, 1985, respectively. The rent receipts are signed by [REDACTED]. However, as stated above, in his statement [REDACTED] does not mention having rented a room in his house to the applicant. Therefore, these rent receipts have minimal probative value.

The record contains copies of three receipts dated in 1987. However, these receipts fail to provide any information that would serve to link them to the applicant, such as his name and address. Therefore these documents will be given no probative or evidentiary weight.

The applicant has submitted a copy of a receipt dated June 30, 1987 from the [REDACTED] California for a donation made by the applicant. This receipt is some evidence of the applicant's presence in the U.S. for some part of 1987.

The record contains an original postmarked stamped envelope and copies of two envelopes, sent to the applicant at addresses in California. The postmark dates on the original envelope and one envelope copy have been altered by being written over, so that the original postmark dates cannot be determined. In addition, the postmark date on the remaining envelope copy is illegible. Therefore, these envelopes will be given no probative or evidentiary weight.

The above documents are some evidence in support of the applicant's residence in the United States for some part of 1986, 1987 and 1988.

While some of the above documents indicate that the applicant resided in the United States for some part of the requisite period, considered individually and together with other evidence of record, they do not establish the applicant's continuous residence for the duration of the requisite period.

The remaining evidence in the record is comprised of copies of the applicant's statements, the instant I-687 application, the initial I-687 application signed by the applicant on February 21, 1991, and filed to establish his CSS class membership, and a Form I-485, application to adjust to permanent resident status under the Legal Immigration Family Equity (LIFE) Act.

In the instant I-687 application, the applicant listed residences during the requisite period in California, from December 1981 to April 1984 on [REDACTED] and from April 1984 through the end of the requisite period on [REDACTED]. The applicant listed employment in California from 1981 to early 1984 with [REDACTED] (although he does not list his occupation), and from 1984 through the end of the requisite period as a clerk cashier at [REDACTED]. The applicant listed one absence from the U.S. during the requisite period, from September to October 1987.

In the initial I-687 application, the applicant stated that he first entered the U.S. on November 30, 1981.

In a CSS class member worksheet signed by the applicant on February 21, 1991, the applicant stated that he was absent from the U.S. from September 5, 1987 to October 25, 1987.

As stated previously, to meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony, and the sufficiency of all the evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6). Here, the applicant has failed to provide probative and credible evidence of his continuous residence in the United States for the duration of the requisite period. Upon a *de novo* review of all of the evidence in the record, the AAO agrees with the director that the evidence submitted by the applicant has not established that he is eligible for the benefit sought.

Finally, the AAO notes that on October 11, 1992, the applicant was charged with one count of violating section 245a.1 of the California Penal Code (PC), *Assault with Deadly Weapon Other Than Firearm*. The record shows that on October 13, 1992 the charge was rejected, and on September 30, 1997 the charge was withdrawn. (Superior Court, State of California, County of Kern, Metropolitan Division, case number [REDACTED])

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