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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**

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DATE: **JUN 01 2012** Office: NEW YORK, NY

FILE: 

IN RE: Applicant: 

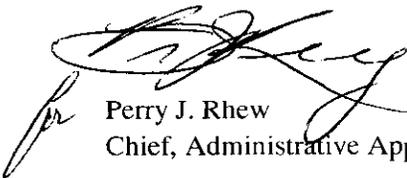
APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the
Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

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 J. 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 District Director (director), New York, New York. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, a native of India, 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 on December 1, 2005. On January 3, 2007, the director erroneously denied the I-687 application, finding that the applicant abandoned the application, pursuant to 8 C.F.R. § 103.2(b)(13), by failing to appear for a scheduled interview on September 11, 2006.¹ Because the director erred in denying the application based on abandonment, on October 7, 2010, the director, National Benefits Center issued a notice advising the applicant of the right to appeal the decision to the AAO.

On April 24, 2012, the AAO withdrew the decision of the director and considered the application on a *de novo* basis, evaluating the sufficiency of the evidence in the record, according to its probative value and credibility as required by the regulation at 8 C.F.R. § 245a.2(d)(6).² Based on the evaluation, on April 24, 2012, the AAO issued a Notice of Intent to Deny (NOID), notifying the applicant of its intention to deny his application because the applicant failed to establish by a preponderance of the evidence that he has resided in the United States in an unlawful status for the duration of the requisite period.

On May 14, 2012, the AAO received the applicant's response to the NOID.

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 On December 14, 2009, the United States District Court for the Eastern District of California ruled that United States Citizenship and Immigration Services (USCIS) may not apply its abandonment regulation, 8 C.F.R. § 103.2(b)(13), in adjudicating legalization applications filed by CSS class members. *See, CSS v. Michael Chertoff*, Case 2:86-cv-01343-LKK-JFM.

² 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.

The issue in this proceeding is whether the evidence submitted by the applicant is sufficient to establish that 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 of time. The AAO finds that the applicant has failed to meet this burden.

In the NOID, the AAO notified the applicant that he has submitted insufficient credible evidence to establish that he entered the United States before January 1, 1982 and resided continuously in the country through May 4, 1988. Specifically, the AAO noted that the applicant submitted two statements from witnesses attesting to his residence in the United States during the requisite period. The AAO noted that the witness statements contradicted information the applicant provided on the Form I-687 regarding his employment and residential addresses in the United States. The AAO requested that the applicant provide a reasonable explanation for the inconsistencies, provide rebuttal evidence, and submit additional evidence in support of his residence in the United States during the requisite period. The AAO also noted that the applicant failed to provide any primary evidence of his residence in the United States since 1981.

In response, the applicant submitted the following documentation:

- A statement dated May 2, 2012 from [REDACTED] who identified himself as the president of [REDACTED] in Long Island City, New York, stating that the applicant "is working with our company as a driver/independent contractor, on radio [REDACTED] and that the applicant is honest and hardworking.
- A statement dated May 5, 2010, from [REDACTED] who identified himself as the president of [REDACTED] in Richmond Hill, New York, stating that the applicant has been "attending our congregation at weekends since 2001."
- Statements from [REDACTED] and [REDACTED] stating that they have known the applicant since 1981 and that they have known him to be an honest, reliable, hardworking and trustworthy individual.
- A statement from an individual stating that he has known the applicant for the last 20 years, that the applicant has been residing in New York, and that the applicant "is a very honest and a good moral character."

The AAO acknowledges receipt of these documents and notes that the statement from The Sikh Cultural Society, Inc. attests to knowing the applicant in 2001. This statement shall not be considered as it is not probative of the applicant's residence in the United States during the requisite period.

The statement from [REDACTED] does not comport with the regulatory requirements at 8 C.F.R. § 245a.2(d)(3)(i) because the statement does not identify the applicant's address during the requisite period, does not indicate the period of the applicant's employment with the company, and does not declare whether the information about the applicant was taken from company records, where the records are maintained and whether the records will be available for verification. The statement is not accompanied by any pay stubs, earnings statements, or tax records to show that the applicant was actually employed with the company and the period of his employment. Finally, the statement is inconsistent with the employment information provided by the applicant on the Form I-687 he filed in December 2005.

This statement further contradicted the information provided by the applicant on the Form I-687 application and the affidavits he submitted in support of his application. 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 without competent objective evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's evidence also reflects on the reliability of other evidence in the record. *See id.*

The witnesses who claim to have known the applicant since 1981, provided very few details about the applicant's life in the United States and the nature and extent of their interactions with him over the years. The statements are not accompanied by documentary evidence – such as photographs, letters, and the like – of the witnesses' personal relationships with the applicant in the United States during the requisite period. For the reasons discussed above, the statements have little probative value as evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through the requisite period.

The AAO notes that the applicant's response has failed to overcome the evidentiary deficiencies and inconsistencies noted in the NOID. Therefore, upon a *de novo* review of all of the evidence in the record, the AAO finds that the applicant has failed to establish that he has continuously resided in the United States in an unlawful status for the duration of the requisite period.

Accordingly, 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.