



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF S-S-

DATE: SEPT. 28, 2015

APPEAL OF NATIONAL BENEFITS CENTER DECISION

APPLICATION: FORM I-687, APPLICATION FOR STATUS AS A TEMPORARY
RESIDENT UNDER SECTION 245A OF THE IMMIGRATION AND
NATIONALITY ACT

The Applicant, a native and citizen of India, seeks status as a temporary resident. *See* Immigration and Nationality Act (the Act) § 245A, 8 U.S.C. § 1255(a). The Director, National Benefits Center, denied the application. The Director subsequently denied a motion to reopen. The matter is now before us on appeal. The appeal will be dismissed.

The Applicant filed the instant application 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). The Director erroneously denied the application due to abandonment, pursuant to 8 C.F.R. § 103.2(b)(13), finding that the Applicant failed to appear for a scheduled fingerprint appointment.¹

On appeal, the Applicant states that he did not receive the fingerprinting notice and that he was granted a work permit after he was fingerprinted. He further asserts that he has established the requisite continuous residence and physical presence in the United States. The Applicant submits a brief and additional evidence.

Because the Director erred in denying the application based on abandonment and by not advising the Applicant of the right to appeal the decision, the Director's decision will be withdrawn and we will consider the Applicant's claim *de novo*, evaluating the sufficiency of the evidence in the record according to its probative value and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

¹ On December 14, 2009, the U.S. District Court for the Eastern District of California ruled that U.S. 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 We conduct appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

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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). An 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 phrase “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 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).

Even if the Director has some doubt as to the truth, if an 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 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 an 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).

On June 22, 2015, we gave the Applicant notice of our intent to dismiss the appeal, because the record of evidence did not establish his continuous residence in the United States throughout the requisite period. The Applicant responded with additional evidence.

At the time of completing the Form I-687 application, the Applicant indicated that he had resided in the United States since December 1981. To support this claim, he provided affidavits from [REDACTED] who attest to having first met him in California in 1981. [REDACTED] also attests that since meeting at a Sikh temple in [REDACTED] California, he and the Applicant have maintained a friendship. [REDACTED] also attests that since first meeting the Applicant at [REDACTED] in [REDACTED] California, they have met several times at [REDACTED] in [REDACTED]. [REDACTED] also attests that he and the Applicant first met at [REDACTED] temple in [REDACTED] California, that the Applicant visited the temple several times and would help serve food and do chores, and that

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they are in touch with each other and meet when possible. [REDACTED] also attests to having first met the Applicant in fields in [REDACTED] where her mother worked, and to his work ethic and personality. [REDACTED] also attests that after first meeting him at a Sikh temple in [REDACTED] California, he and the Applicant resided together for three to four months, they maintain contact, and the Applicant visits him.

To determine that the statements the Applicant made in support of the instant application are consistent with the evidence in the record and to meet his burden of proving by a preponderance of the evidence that the Applicant has resided continuously in the United States since before January 1, 1982, we requested evidence that he entered the United States before January 1, 1982, and that he continuously resided in the United States in an unlawful status since such date and through the date when he attempted to file a Form I-687 application or was caused not to timely file.

In response to our notice, the Applicant submits some of the same evidence earlier provided and the following: an affidavit from [REDACTED] dated July 10, 2015, and an affidavit from the Applicant, dated July 10, 2015. [REDACTED] attests that the Applicant, her uncle, departed India in 1980; that she first met the Applicant in the United States in 2003 while he worked with [REDACTED] and she attests to his work ethic and personality. In his affidavit the Applicant attests that he entered the United States before January 1, 1982, and continuously resided here throughout the requisite period and up until he filed his Form I-687.

The affidavits, however, lack detail and do not establish the Applicant's continuous residence. Although they attest to knowing the Applicant resided in the United States during the requisite period, the affiants do not give additional information relevant to the requisite period. For example, the witnesses and affiants do not indicate when in 1981 they met the Applicant, how they date their acquaintance with the Applicant in the United States, and how and to what extent they maintained contact with him throughout the requisite period. The witnesses do not provide details of specific shared activities, do not date the activities, do not show how frequently they had contact with the Applicant during the requisite period, and do not provide evidence to establish that they resided in the United States since 1981. [REDACTED] states that she knows that the Applicant departed India in 1980, but she does not explain how she dates his departure from India, whether he departed India for the United States, whether and how she maintained contact with him and was otherwise aware of his residence in the United States from 1981 until she met him here in 2003. The Applicant's affidavit is not supported by documentation apart from the statements and affidavits described above which lack detail and are not supported by documentation. As such, the affidavits and statements provided are not probative of the Applicant's continuous residence and are of little evidentiary value.

This lack of detail and supporting evidence casts considerable doubt on the Applicant's claim that he resided continuously in the United States since prior to January 1, 1982. Doubt cast on any aspect of an 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 an 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 record lacks objective evidence to explain or justify

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the discrepancies in the record. Therefore, we conclude that the Applicant has not established continuous residence in the United States in an unlawful status during the requisite period.

The record also includes 15 invoices from [REDACTED] dated 2003 and 2005. These invoices do not pertain to the requisite period. The documentation of record, considered individually and cumulatively, does not establish his continuous residence in the United States in an unlawful status during the requisite period.

The Applicant has the burden of proving by a preponderance of the evidence that he has resided in the United States for the requisite periods. 8 C.F.R. § 245a.2(d)(5). The Applicant has not met his burden of proof.

In application proceedings, it is the Applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of S-S-*, ID# 10719 (AAO Sept. 28, 2015)