



U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY



41

FILE: [REDACTED]
MSC-06-101-13210

Office: SAN FRANCISCO (FRESNO)

Date: **SEP 22 2008**

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.

Robert P. Wiemann, Director
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, San Francisco. 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 to Citizenship and Immigration Services (CIS) or the Service. 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. Specifically, the director noted that the record contained a Form G-325A Biographic Information and a Form I-589, Request for Asylum in the United States that both indicate that the applicant resided in India until March 1982. Therefore, because of this and other inconsistencies in the record, the director found that the applicant did not establish that he entered the United States on a date before January 1, 1982 and then resided continuously in the United States for the duration of the requisite period. 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, the applicant asserts that the director erred when he stated that the applicant did not enter the United States before January 1, 1982. He further submits additional documentation in support of his application.

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).

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.

An applicant shall be regarded as having resided continuously in the United States if, at the time of

filing no single absence from the United States has exceeded forty-five (45) days and the aggregate of all absences has not exceeded one hundred eighty (180) days between January 1, 1982 and the date of filing his or her application for Temporary Resident Status unless the applicant establishes that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed. 8 C.F.R. § 245a.2(h)(1)(i).

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 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 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.

The record shows that the applicant submitted a Form I-687 application and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on January 8, 2006. At part #4

of this application, the applicant indicated that in addition to his complete name, [REDACTED] he had also used the names [REDACTED]. At part #30 of the Form I-687 application where applicants were asked to list all residences in the United States since first entry, the applicant showed his addresses in the United States during the requisite period to be: [REDACTED] in Chowchilla, California from September 1981 to November 1982; [REDACTED] in [REDACTED], California from November 1982 to August 1985; [REDACTED] in Bakersfield, California from August 1985 to December 1985; [REDACTED] in Bakersfield from December 1985 to May 1986; and 1820 Alta Vista in Bakersfield from May 1987 to September 1990. At part #31 where the applicant was asked to list all organizations and churches that he was affiliated with, he indicated that during the requisite period, he was affiliated with [REDACTED] in Bakersfield from November 1985 until October 1990. It is noted that the applicant also indicated that he was affiliated with other Sikh associations in India prior to the requisite period and with a Sikh Temple in Bakersfield after the requisite period ended. At part #32 where the applicant was asked to list all of his absences from the United States since he first entered, he indicated that he was absent from the United States three times during the requisite period. He states that he was absent during the month of May in 1982; from January to February in 1986; and then during the month of July in 1987. At part #33, where the applicant was asked to list all of his employment in the United States since he first entered, he showed his employment in the United States during the requisite period to be: as a farm laborer for Jagjit Singh Gill Farms in Chowchilla, California from September 1981 until November 1982; as a cashier at a 7-eleven store in Long Beach, California from November 1982 until June 1985; at a Burger King in Bakersfield, California from September 1985 until January 1986; and as an ice cream vendor in Bakersfield from June 1986 until July 1990.

The record contains a second Form I-687 submitted in 1990 to establish class membership. At part #4 of this Form I-687 the applicant indicated that he had used one name other than his full name. He stated that this name was [REDACTED]. At part #33 of this Form I-687, where the applicant was asked to list his addresses of residence since he first entered, he indicated that he first began residing in the United States in December 1982 when he resided on Pine Avenue in Long Beach. Other addresses of residence and dates associated with those addresses are generally consistent with those on his subsequently filed Form I-687. At part #35 of this Form I-687 application, the applicant indicated that he was absent from the United States twice during the requisite period: from January 1986 until March of that year when he went to visit his family because his father was ill and passed away; and for an unspecified length of time in 1987 when he went to India to visit his parents. At part #36 of this Form I-687, the applicant indicated that he worked: at Gill Farms in Chowchilla, California from September 1981 until November 1982; for a 7-eleven from December 1982 until May 1985; for two different Burger King restaurants from July 1985 until June 1986; and as an ice cream vendor from June 1986 until July 1987. He did not indicate what his employment was from July 1987 until July 1990. It is noted that though the applicant did not indicate an address of residence in the United States until December 1982, he did indicate that he was employed in the United States since September 1981.

The record contains evidence that the applicant was arrested on January 10, 1985 at a 7-eleven Store at [REDACTED]. Subsequent to this, the applicant was issued a Form I-265 Application for Order to Show Cause for Bond/Custody Processing Sheet. This Form I-265 indicates that on January 11, 1985 it was determined that the applicant entered the United States in Galveston, Texas on an unknown date in June 1982. The record shows that the applicant voluntarily departed the United States on January 21, 1986. It is noted that the applicant did indicate that he was absent in January to either February or March in 1986 on his Form I-687 applications. However, he indicated that the purpose of this absence was to visit family in India.

On an Interview Information Sheet from the Deportation Branch dated January 7, 1986, the applicant indicated he entered the United States in June 1982 and that the date of his first employment in the United States was in July 1982.

The record contains a Form I-589 Request for Asylum in the United States that the applicant submitted on July 19, 1985. On this form, the applicant indicated that he departed from India in March of 1982 by boat and arrived in the United States on May 21, 1982. Part # 22 of this Form indicates that the applicant's son, [REDACTED] was born on [REDACTED]. It is noted that this indicates that the information on this form regarding either the applicant's date of first entry into the United States or his absence from the United States in 1982 is not consistent with what he showed on his Form I-687.

The record also contains a Form G-325A Biographic Information signed by the applicant on July 18, 1985. On this Form G-325A, the applicant indicates that he lived continuously in the Punjab Province of India from 1951 until February 1982. The first address he lists in the United States is in Fresno, California, where he indicates he began residing in May 1982. He further shows that he worked as a crewman on a vessel in Galveston, Texas from March 1982 until May 1982 and that he then began agricultural work in an unspecified location from June until November 1982. It is noted that on this Form G-325A the applicant did not represent either his employment or his addresses of residence consistently with what he indicated on his Form I-687. This casts doubt on whether the applicant accurately represented his date of first entry into the United States, his employment and his addresses of residence to Citizenship and Immigration Services (CIS) on his Form I-687.

The record further contains a form on which the United States Embassy in New Delhi indicated that the applicant appeared in person at the Immigration and Naturalization office located in the American Embassy in New Delhi, India on September 9, 1988. The officer who completed this form indicated that the applicant presented a document to the officer at that time and attempted to apply for adjustment of status on that date. This indicates that the applicant was outside the United States in September 1988.

The applicant has the burden of proving by a preponderance of the evidence that he has resided in

the United States for the requisite period. 8 C.F.R. § 245a.2(d)(5). To meet his burden of proof, an applicant must provide evidence of eligibility apart from his own testimony. 8 C.F.R. § 245a.2(d)(6). The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of documentation that an applicant may submit to establish proof of continuous residence in the United States during the requisite period. This list includes: past employment records; utility bills; school records; hospital or medical records; attestations by churches, unions or other organizations; money order receipts; passport entries; birth certificates of children; bank books; letters or correspondence involving the applicant; social security card; selective service card; automobile receipts and registration; deeds, mortgages or contracts; tax receipts; and insurance policies, receipts or letters. An applicant may also submit any other relevant document pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

Evidence in the record that is relevant to the applicant's claim that he maintained continuous residence in the United States for the duration of the requisite period includes the following:

Photocopies of both a California State Driver's License a California State Identification Card. Both documents indicate they were issued to the applicant on May 26, 1983.

- Photocopies of road test score sheets that show that the applicant took road tests in Long Beach, California on May 2, 1984, May 11, 1984 and May 21, 1984.
- A Department of Motor Vehicles record that indicates the applicant was issued a California Identification Card on July 28, 1983 and a Driver's License on May 21, 1985. These records also show that the applicant changed his address on file in December 1985.
- Photocopies of pay stubs issued to the applicant: by 7-eleven for periods ending on December 19, 1982, December 26, 1982 and December 23, 1983 and December 30, 1984 by Burger King for periods ending on November 25, 1985, November 30, 1985, December 15, 1985 and December 31, 1985; and by an unstated employer for periods ending January 15 and January 31, 1986.
- A letter from Washington Mutual Bank that is dated April 24, 2003. This letter indicates that the applicant opened a bank account on September 29, 1983.

A letter from the Great Western Bank in Bakersfield, California that is dated August 22, 1990. This letter indicates that the applicant opened a bank account on September 29, 1983.

A photocopy of a passbook from the applicant's Great Western Bank Account that shows that the applicant made transactions beginning on March 24, 1986 and that he continued to have transactions until the end of the requisite period.

- A Credit Card Service Bureau card issued to the applicant on an unknown date and effective through September 1986.
- A photocopy of an Ambulatory Care Services Patient Financial Services card that indicates that it was issued to the applicant. The date December 19, 1985 has been written on this photocopy. On the same page with this photocopy is a photocopy of another form that indicates that an unnamed individual had appointments on February 27, 1986.
- A photocopy of an envelope addressed to the applicant in Long Beach, California that is date stamped December 22, 1983.
- Pay stubs from Gurdial Grewal, Labor Contractor that are dated November 2, 1981 and July 2, 1982. It is noted that the name that appears on the November 2, 1981 pay stub is "Malkit" and the name that appears on the November 1982 pay stub is not legible. A note on the photocopy indicates that Malkit is an alias name used by the applicant.
- Pay stubs from [REDACTED] issued to the applicant on September 12, 1982 and November 6, 1982 and a pay stub that does not show who it was issued to for the period ending August 12, 1982.

A pay stub from Mahil Farms issued to [REDACTED]" on June 13, 1982. A note on the photocopy indicates that Dhillon is an alias used by the applicant. However, the applicant has not submitted evidence that proves that he has used this name. Therefore, this document cannot clearly be associated with the applicant.

- A photocopy of a receipt for registered mail sent by the applicant in August 1982 and a second photocopy of a receipt for registered mail sent by [REDACTED] on November 19, 1982. The applicant has not submitted evidence that proves that he has used this name. Therefore, this document cannot clearly be associated with the applicant.
- An affidavit from the [REDACTED] Temple that was notarized on January 25, 2002 and is signed by [REDACTED]. The affiant states that he first met the applicant in India in 1970. He states that he also saw the applicant in 1981 when he began to reside in the United States. He further states that the applicant moved to Bakersfield in 1985.
- An affidavit from [REDACTED] that was notarized on January 29, 2002. The affiant states that he met the applicant when he was working for Gill Farms in December 1981. He states that he and the applicant see each other constantly. However, he does not state the frequency with which they saw each other during the requisite period. He does not indicate whether there were periods of time during the requisite period when he did not see the applicant.

- An affidavit from [REDACTED] that was notarized on August 27, 1990. The affiant states that he has known the applicant since 1981 when the applicant first came to the United States. He asserts that the applicant has worked in the United States since he arrived in July 1981. He states that the applicant went to India in July 1987 and returned in August of that year.
- Forms W-2 Wage and Tax Statement for 1985 and 1986 issued to the applicant. It is noted that the last name shown on these documents is spelled, "Singn."
- A photocopy of a check issued to [REDACTED] in Chowchilla, California. This check is dated November 6, 1982.

The director of the National Benefits Center issued a Notice of Intent to Deny (NOID) to the applicant on March 29, 2006. In this NOID, the director stated that the applicant failed to submit evidence of the following: that he entered the United States before January 1, 1982 and then resided in a continuous unlawful status except for brief absences from before 1982 until the date he (or his parent or spouse) was turned away by Immigration and Naturalization Service (INS) when they tried to apply for legalization; that he was continuously physically present in the United States except for brief, casual and innocent departures from November 6, 1986 until the date that he (or his parent or spouse) tried to apply for legalization; and that he was admissible as an immigrant. The director granted the applicant 30 days within which to submit additional evidence in support of his application.

In response to the director's NOID, the applicant submitted the following evidence in support of his application:

- A declaration from the applicant that is dated April 19, 2006. The applicant states that he has resided in the United States continuously since 1981 and requests a favorable determination regarding his application.
- An affidavit from [REDACTED] that was notarized on April 19, 2006. The affiant submits photocopies of the identity page of his United States passport and of his California Driver's License with his affidavit. He states that he met the applicant at [REDACTED] Farm in November 1981. He states that they became friends at that time and that they met frequently since that time. However, he fails to indicate whether there were periods of time during the requisite period when he did not see the applicant. The affiant states that he drove the applicant to the airport in January 1986 when the applicant voluntarily departed the United States. He states that the applicant returned to the United States one month after departing and began working in Bakersfield again.
- An affidavit from [REDACTED] that was notarized on April 15, 2006. The affiant

submits a photocopy of his California Driver's License and the identity page of his United States passport with his affidavit. The affiant states that he know that the applicant has resided in the United States since prior to January 1, 1982 and for the duration of the requisite period. He states that the applicant had an absence from January to March 1986. He states that he knows date he met the applicant because he met him at a religious function at Chowchilla Gill Farm.

- An affidavit from [REDACTED] that was notarized on April 17, 2006. The affiant submits a photocopy of his California Driver's License and his Certificate of Naturalization that was issued to him on August 18, 1981. The affiant states that he has known the applicant since 1970. He states that the applicant entered the United States in July 1981. He states that he has kept in contact with the applicant since that time and that he applicant has traveled back to India three to four times since he first entered.

The director denied the application on February 14, 2007. The director noted the applicant's inconsistent testimony as to when he commenced residing in the United States. The applicant indicated that resided in India until March 1982 on his Form I-589 and Form G-325A, Biographic Information. On his Form I-589, the applicant stated that he first entered the United States on May 21, 1982 though the port of Galveston, Texas after being aboard a vessel. The director states that the applicant's Form I-589 indicates that the applicant's son, [REDACTED] was born on November 15, 1982, which indicates that the applicant must have been in India in 1982 when this child was conceived. The director also notes that on September 9, 1988 the applicant appeared at an American Embassy in New Delhi, India and attempted to apply to adjust status at that time. The director notes that though the applicant submitted a pay stub bearing the name [REDACTED] he had not previously informed CIS that he had used this name. It is noted that the applicant indicated that he had previously used this name at part #4 of his Form I-687 application submitted in 2006, but did not indicate that he had ever used this name when asked to list all names he had used on his Form I-687 submitted in 1990. The director stated that contradictions in the applicant's testimony regarding when he first entered the United States caused the applicant to fail to meet his burden of proof.

It is also noted that the director incorrectly stated in his decision that the applicant's request for voluntary departure was granted on January 30, 1986. However, the AAO notes that the record indicates that this relief was granted on December 30, 1985 and that the applicant voluntarily departed on January 21, 1986. The January 30, 1986 date was associated with the date that the voluntary departure expired.

On appeal, the applicant asserts he first entered the United States in June 1981 but that he was briefly absent from the United States during the month of May in 1982 when he returned to India to see his newborn son. He also states that his son was actually born on [REDACTED] and he also submits the following additional evidence in support of his application:

- An affidavit from [REDACTED] that was notarized on March 3, 2007. The affiant states that he is the applicant's maternal uncle and asserts that the applicant uses both the names [REDACTED]
- An affidavit from [REDACTED] that was notarized on March 3, 2007. The affiant states that the applicant was named [REDACTED] when he was first born, but that he was re-named at a religious ceremony. He asserts that because of this, the applicant is known by both names.
- An affidavit from [REDACTED] that was notarized on February 28, 1997. The affiant states that the applicant is known by both the nickname [REDACTED] and by his proper name [REDACTED]
- The applicant resubmits a pay stub that indicates that [REDACTED] Labor Contractor paid "[REDACTED]" for employment performed in the period ending on November 2, 1981.
- A photocopy of the applicant's son's passport. This passport indicates that [REDACTED] was born on [REDACTED]. This passport also indicates that [REDACTED]'s father is named [REDACTED]
- A photocopy of the applicant's son's birth certificate. The translation of this document indicates that the applicant is the father of a son named [REDACTED] who was born on [REDACTED]
- A photocopy of the applicant's son's Form I-94 that shows that he indicated that his date of birth was [REDACTED]

The AAO has reviewed the documents as noted above that are relevant to the applicant's claim of having maintained continuous residence in the United States for the duration of the requisite period and has found that the applicant has failed to meet his burden of proof. Though he has submitted contemporaneous and other evidence of his residence in the United States during the requisite period as noted above, these documents do not overcome the applicant's testimony in the record on which he indicated that he did not enter the United States until a date after May 1982. He has submitted evidence on appeal that indicates that his son was actually born in 1981 rather than in 1982. He has also re-submitted a pay stub issued to an individual named [REDACTED] in 1981 and submitted additional documents stating that he sometimes uses this name. However, the AAO finds that this new evidence, when considered with other documents in the record does not allow the applicant to meet his burden of proof. Specifically, he does not his previously testimony that he did not enter the United States before January 1, 1982. Evidence in the record on which he has stated that he first entered the United States after January 1, 1982 includes: 1) the Form I-589 Request for Asylum on which the applicant indicated that he arrived in the United States on May 21, 1982 at the port of Galveston, Texas by means of a marine vessel named the

2) the Form G-325A, Biographic Information that he signed on July 18, 1985 on which he stated that he resided in Ludhiana, Punjab, India from his date of birth until February 1982 and that he then resided and worked on the marine vessel " " as a crewman from March 1982 until May 1982 and that his first employment in the United States began in June 1982; 3) the Form 1-352 Immigration Bond which indicates that the applicant arrived in the United States in June 1982; 4) an Interview Information Sheet, Deportation Branch on which he stated that he entered the United States on June 1982 as a crewman and was then first employed in July 1982.

On the applicant's Form I-687 submitted pursuant to the CSS/Newman Settlement Agreements, which he signed under penalty of perjury, he showed that he resided and worked in the United States since 1981 and that he was absent from the United States on three occasions, in May 1982, from January to February 1986, and during the month of July 1987. However, other evidence in the record shows that the applicant indicated that he first entered the United States in either May or June of 1982 and obtained his first employment in the United States after that time. The record also shows that the applicant was granted voluntary departure and left the United States on January 21, 1986 and that he appeared at a United States Embassy in September of 1988. The applicant indicated that his absence in 1986 occurred because he wanted to visit family and he did not indicate that he was absent from the United States in 1988 at any time. These inconsistencies cast doubt on whether the applicant has accurately indicated whether he began his residence and employment in the United States prior to January 1, 1982 and whether he has fully disclosed his absences from the United States during the requisite period to CIS.

The inconsistencies in the record regarding when the applicant first began residing in the United States and regarding his absences seriously detracts 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 applicant's contradictory statements on his applications, 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.