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

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[Redacted]

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FILE:

[Redacted]

Office: Los Angeles

Date: JUN 27 2007

MSC-05-245-34067

IN RE:

Applicant:

[Redacted]

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:

[Redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

Robert P. Wieman, 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, Los Angeles, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director determined the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through the date that his Form I-687, Application for Status as a Temporary Resident, was considered filed with the Immigration and Naturalization Service or the Service (now Citizenship and Immigration Services or CIS) in the original legalization application period of May 5, 1987 to May 4, 1988. Therefore, the director determined that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements and denied the application.

On appeal, the applicant, through counsel, asserts that the director failed to consider and give proper weight to the affidavits and the applicant's testimony in support of his claim that he resided unlawfully in the United States since 1981.

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 Immigration and Nationality Act (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).

For purposes of establishing residence and presence in accordance with the regulation at 8 C.F.R. § 245a.2(b), "until the date of filing" shall mean until the date the applicant attempted to file a completed Form I-687 application and fee or was caused not to timely file, consistent with the class member definitions set forth in the CSS/Newman Settlement Agreements. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

An applicant for adjustment of status 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. *See* 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.* 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 (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 has furnished sufficient credible evidence to establish his continuous unlawful residence in the United States from prior to January 1, 1982 through the date his parents attempted to file a Form I-687 application with the Service during the period between May 5, 1987 and May 4, 1988; and to establish his continuous physical presence in the United States from November 6, 1986 through the date his parents tried to apply for legalization during that period from 1987 to 1988. Here, the submitted evidence is not relevant, probative or credible.

The record shows that the applicant submitted a Form I-687, Application for Status as a Temporary Resident Under Section 245A of the Act, and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, to CIS on June 2, 2005. At part #30 of the Form I-687, where applicants are asked to list all residences in the United States since first entry, the applicant listed three addresses, the first from January 1981 to November 1987 at [REDACTED], San Bernardino, California; the second from November 1987 to January 1991 at [REDACTED] Rialto, California; and the third and current address from January 1991 to the present at [REDACTED] Rialto, California. At part #31, which asks the applicant to list all affiliations or associations, clubs, organizations, churches, unions, businesses, etc., the applicant did not list any. At part #32, which asks the applicant to list all absences from the United States since entry, the applicant listed one visit to Canada in June 1986 to "visit families." At part #33, the applicant listed his sole employment in the United States since entry as a yard cleaner for West Coast Auto in Montclair from 1987 to March 2005.

As evidence of continuous unlawful residence in this country since prior to January 1, 1982, along with his I-687 Application the applicant provided three affidavits from friends, dated December 12 or 13, 2005: (1) an affidavit by [REDACTED] stating that, as a friend of the family she knows that the applicant has lived in the United States since 1981; (2) a similar affidavit by [REDACTED] stating that she has known the applicant since 1981 and that she has been a friend to his mother; and (3) a similar affidavit by [REDACTED] stating that he knows that the applicant has lived in the United States since 1982 and that he has seen the

applicant "as a child in various Nigerian part[ies] since then." Also submitted with the I-687 Application was a "First School Living [sic] Certificate," issued on December 10, 1981 by Anambra State of Nigeria, Ministry of Education, Enugu, certifying that the applicant "passed the Ministry of Education First School Leaving [sic] Certificate Examination, 1980, at Pass Level."

A CIS officer interviewed the applicant on December 14, 2005. Based on the officer's interview notes, the applicant stated that he entered the United States with his parents in 1981, but he does not know how he entered; he visited a friend in Canada, but does not know the city or the border he used to go to Canada or return; he has no document from his employer or his employer's telephone number.¹ CIS issued a request for additional documentation following the interview indicating that the applicant should submit a copy of his birth certificate; evidence that he lived with his parents in the United States from prior to January 1, 1982 to May 4, 1988; and evidence of residence in the United States from 1981 through 1988, such as school records.

In response, the applicant provided (1) a copy of an immunization record with the applicant's name on one page, but no vaccinations recorded, and another page without the applicant's name but showing that six vaccinations were administered by SBVC Health Services in San Bernadino, California, from April to November 1981; (2) a letter, dated December 12, 1981 from [REDACTED] Pastor In Charge of St. Catherine's Catholic Church in Rialto, California, addressed to [REDACTED] welcoming her and her family to the church; and a flyer from the church announcing a celebration for the birthday of Our Lady of Guadalupe on December 11, 1981, with the name [REDACTED] handwritten on the flyer as an invitee; (3) a document from the National Population Commission of Anambra State certifying that an application for a National Birth Certificate was made by [REDACTED] on December 29, 2005 on behalf of the applicant; that on the date of his birth, compulsory Civil Registration had not commenced in Nigeria; and that the Affidavit for Age Declaration sworn to at the High Court Registry, Ihiala, on December 29, 2005 was valid and acceptable; the referenced Affidavit for Age Declaration was attached, indicating that, based on the statements of [REDACTED] the deponent and brother of the applicant, the applicant was born in Anambra State on August 16, 1971 and his parents were [REDACTED] and [REDACTED] and (4) a Certificate of Death issued by the National Population Commission of Nigeria indicating that [REDACTED] aged 85, died on August 29, 2005, and his death was registered on December 12, 2005. The applicant stated in his cover letter submitted with these additional documents that "My parent who is to prove the document for me died some month ago . . . on 8-29-2005." The director noted the additional documents and concluded that the applicant had failed to submit any documentation showing that he and/or his parents had entered the United States before January 1, 1982 and that he has resided continuously in the United States since that date and through the statutory period. The application was denied accordingly on April 15, 2006.

¹ The interview notes also state that the applicant is not a CSS/Newman Class Member. However, the I-687 Application was submitted with a CSS/Newman (LULAC) Class Membership Worksheet and was accepted as properly filed. As this issue was not raised in the director's decision, and the decision was not based on failure to prove class membership, the AAO will not address the issue on appeal.

On appeal, the applicant submitted two additional documents: (1) a letter, dated May 9, 2006, from [REDACTED] the owner of R & D Custom Draperies, stating that he has known the applicant since January 1982, having contact with the applicant through the applicant's mother, [REDACTED] before she returned to Nigeria; he stated the applicant's address as [REDACTED] San Bernardino, California; and (2) a statement "To Whom It May Concern," dated May 7, 2006, on letterhead of the Ihiala Regional Union of Southern California, certifying that the applicant "has been a non-financial member of Ihiala Regional Union of Southern California since 1982 [and] . . . became an active member on turning 21yrs (1992) . . . [and that] [t]his association testify for his stay [sic] in the United States since 1981." The signatures on the letter are illegible and their names are not provided.

The record indicates that the applicant was born in Nigeria in August 1971. He claims that he entered the United States with his parents in January 1981. On appeal he claims, through counsel, that he entered unlawfully without inspection at the U.S.-Mexico border, while at his interview he claimed he did not remember how he entered. He also claimed in his I-687 Application that he visited "families" in Canada in 1986, while at his interview he stated he visited a friend, also claiming that he did not know what city he visited or what border he crossed. His statements are inconsistent, and his lack of memory not entirely credible. While it is understandable that a nine-year old might not remember the details of his travels, it is not reasonable that a 15-year old traveling for the first and only time outside the United States to Canada would not remember the border or the destination. In addition to his statements regarding entry before January 1, 1982, the only other evidence in the record consists of a copy of a page from a record of vaccinations in 1981 that does not refer to the applicant; a letter and flyer from St. Catherine's Catholic Church welcoming "[REDACTED] December 1981, where there is no evidence that Roseline is the "[REDACTED] listed as the applicant's mother on the applicant's Affidavit for Age Declaration and no evidence that the applicant ever resided with [REDACTED] and two affidavits from individuals [REDACTED] and [REDACTED] (noted above) who simply state that they are family friends, but provide no details regarding their relationship to or knowledge of the applicant. Other affidavits in the record also lack relevant details, and the affiants claim to have known the applicant since 1982. The documents do not provide evidence of entry before January 1, 1982. Indeed, the Nigerian school certificate issued to the applicant in December 1981 tends to contradict his claim of entry into the United States in January 1981. It is also noteworthy that the applicant failed to list any affiliation to St. Catherine's.

Regarding residence in the United States during the statutory period, other than affidavits that lack detail that would make them credible, there is no documentary evidence of residence from 1982 through 1988. Although the applicant claimed on the I-687 Application that he had worked for one employer from 1987 to 2005, he did not provide a single document from his employer or related to his employment for those 18 years and could not provide a telephone number. In its request for additional information, CIS indicated that school records would be helpful as proof of residence, but the applicant neither provided records nor an explanation of why they were unavailable. He also failed to provide any evidence from or about his parents to indicate that they had resided in the United States or that he had resided with them to support his claim of residence. The 2006 letter from [REDACTED], the owner of R & D Custom Draperies, stating that he has known the applicant since January 1982 gave the applicant's current address as [REDACTED] in San Bernardino, where according to the applicant's I-687 Application, he

has not resided since 1987. The statement from the Ithala Regional Union of Southern California, confirming the applicant's membership since the time he was ten years old is not probative, as the names of the officials are not provided and the applicant failed to report any affiliation to that organization. For the above noted reasons, the documents submitted as evidence of entry and residence lack relevance, probative value and credibility.

In denying the application, the director found that the applicant had submitted no credible evidence that he was in the United States during the required time period. The AAO agrees with this finding and notes that the evidence submitted does not support the applicant's claims of residency and contradicts some of his statements. The affidavits in the record are bereft of sufficient detail to support the applicant's claim of residence since 1981; his failure to list any affiliations contradicts letters from a church and a Nigerian organization; his inability to remember details of his travel to Canada and to provide evidence of an 18-year work history diminishes the weight of his statements.

In summary, the applicant has not provided any contemporaneous evidence of residence in the United States relating to the period from 1982 through 1988. Documents he submitted lack sufficient detail and are inconsistent. His statements also are contradicted by the record, lack supporting evidence, and cannot be found credible.

The absence of sufficiently detailed supporting documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, as well as the inconsistencies noted in the record, seriously detract from the credibility of his 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 lack of supporting documentation, inconsistencies in the record and the applicant's reliance upon documents with minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through the date he attempted to file a Form I-687 application, 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.