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U.S. Citizenship  
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[Redacted]

FILE:

MSC-05-174-32418

Office: Los Angeles

Date:

MAR 03 2008

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. Wiemann, 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. 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. 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. 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 he meets all of the criteria and conditions of eligibility under the provisions of the law and submits a statement and two affidavits.

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)(1) 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).

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 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, 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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that she resided in the United States for the duration of the requisite period. Here, the submitted evidence is not relevant, probative, or credible.

The record shows that the applicant submitted a Form I-687 Application and Supplement to Citizenship and Immigration Services (CIS) on March 23, 2005. 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 listed his first address in the United States as [REDACTED] Los Angeles, CA 90011, from December 1981 to October 1983. At part #33, he listed his first and only employment in the United States as a self-employed landscaper/janitor and did not provide a location or a time period for this employment.

The applicant submitted the following documentation:

- A letter dated December 28, 1981 from [REDACTED] on St. Patrick’s Catholic Community letterhead. The letter is addressed to [REDACTED] Los Angeles, CA 90011. The letter is a generic form letter welcoming [REDACTED] and her family to St. Catherine Church. The letter does not mention the applicant’s name. The letter instructs [REDACTED] to “Please remember to use the envelopes we give you. In using your envelopes, you keep your family registered for your children’s religious education and help us keep your family on our records.” Despite

indicating on the Form I-687 at part #31 that he has been a member of the church since 1982 to the present, the applicant has not provided a recent letter from St. Catherine Church confirming his church membership, attendance at services, or indicating its knowledge of his residence in the United States for the duration of the requisite period. For the reasons stated above, this letter has minimal probative value in supporting the applicant's claim that he entered the United States in 1981.

- A notarized affidavit dated October 18, 2005 from [REDACTED] a naturalized United States citizen. [REDACTED] states that he has known the applicant since 1981. He adds that he saw the applicant as a child at various Nigerian parties and saw him grow from a child to a young man. The affidavit lacks any details that would lend credibility to a 24-year relationship with the applicant and it is not accompanied by any evidence that [REDACTED] resided in California for the relevant period. The declarant does not indicate under what circumstances he met the applicant in 1981, how he dates his initial acquaintance with the applicant, an address where the applicant resided in the United States, or how frequently he had contact with the applicant. Given these deficiencies, this statement has minimal probative value in supporting the applicant's claim that he entered the United States in 1981.
- A notarized form-letter "Affidavit of Witness" executed by [REDACTED] and dated November 30, 1989, who states that she resides on [REDACTED] New York, NY 10017. [REDACTED] states that the applicant lived with her in California from December 1981 to April 1988. [REDACTED]'s affidavit does not include street addresses, but only states that the applicant has lived in "California" during that time. [REDACTED] did not provide proof of her identity or evidence of her residence in California from 1981 to 1988. The declarant does not indicate under what circumstances she met the applicant in 1981 and the affidavit lacks any details that would lend credibility to a 24-year relationship with the applicant. Given these deficiencies, this statement has minimal probative value in supporting the applicant's claim that he entered the United States in 1981.
- An "affidavit from landlord" dated July 28, 2005 and executed by [REDACTED] RN, BSN, U.S. Army, who states that the applicant resided with her from November 1994 to the present. The statement is not accompanied by identification. The Form I-687 at part #30 lists three different addresses from June 1994 to the present.<sup>1</sup> The landlord's statement is inconsistent with the Form I-687 because the applicant does not include a new address beginning on November 1994. The Form I-687 at part #30 states that the applicant resided from June 1994 to September 1997 at [REDACTED] Moreno Valley, CA 92557. Sgt. Odimegwu does not provide prior addresses, but states that she currently resides at [REDACTED] Rialto, California 92376. She also states that the applicant has paid her \$150 per month for room and board. In her affidavit, [REDACTED] does not provide any information regarding the applicant's residence from 1981 to 1988. For these reasons, the affidavit does not corroborate the applicant's claim that he resided in the United States during the 1981 to 1983 period.

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<sup>1</sup> The applicant signed the Form I-687 on February 14, 2005.

The record of proceeding also includes a notarized form-letter "Affidavit of Circumstances" executed by the applicant and dated May 8, 1990. The applicant signed this affidavit declaring "under the penalty of perjury that the foregoing is true and correct." In this affidavit, the applicant claims to have first entered the United States on February 25, 1981, as is also stated on the Form I-687, part #16. However, the applicant has not included an address in the United States from February 25, 1981 through November 1981. The applicant's date of birth is January 30, 1977 and in 1981 he was four years old. [REDACTED] in an affidavit mentioned above, states that he lived with her beginning December 1981. However, the applicant has not provided any information regarding the time period from February 25, 1981 to November 1981. Thus applicant's affidavit does not provide any support for his claim of entry into the United States on February 25, 1981 or of his continuous residence in the United States since that date. As noted above, [REDACTED]'s affidavit does not establish the applicant's continuous residence in the United States since December 1981.

On May 18, 2006, the director issued a Form I-72 requesting the following documentation: (1) Proof of your affiant's residence in the U.S. before 1982 – 1986, and phone number; (2) Proof of your affiant's identity (a clear copy of their government issued I.D.); and (3) Form I-765 completed, signed, and dated. On May 24, 2006, the applicant filed his response and included a copy of [REDACTED]'s California driver's license and telephone number, a copy of [REDACTED]'s transcript listing transfer credits earned from Eastern Washington University in 1981, a completed, signed and dated Form I-765, and a copy of the applicant's employment authorization card.

The director denied the application for temporary residence on July 22, 2006 without issuing a notice of intent to deny (NOID). The AAO notes that the director, after stating that the applicant was statutorily ineligible, adjudicated the Form I-687 application on its merits. As a result, the director is found not to have denied the application for class membership. As the director treated the applicant as a class member by adjudicating the application, the director was not required to issue a NOID prior to issuing the final decision in this case. In denying the application, the director found that the applicant failed to establish that he entered the United States prior to January 1, 1982 or that he met the necessary residency or continuous physical presence requirements. Thus, the director determined that the applicant had failed to meet his burden of proof by a preponderance of the evidence.

The director's denial also included information from telephone conversations with two of the applicant's affiants: [REDACTED] and [REDACTED]. According to the decision, [REDACTED] was contacted via telephone on July 22, 2006. [REDACTED] stated that he met [the applicant] for the first time in 1981 or 1982 at a party. He was not able to determine [the applicant's] age but [said that the applicant] could be about nine or ten [years old] at the time." According to the information provided by the applicant, between 1981 and 1982 the applicant was either four or five years old.

The director also stated the following:

[REDACTED] was contacted via telephone on July 22, 2006. He stated that he'd known [the applicant] for a long time. He confirmed that [the applicant] resided at his residence since 1994 until 2005. He further stated that [the applicant] entered the United States eight years before him. He stated that he entered the U.S. in 1994. If [the applicant] entered the U.S. eight years before [REDACTED] that would've made [the applicant's] first entry into the United States in 1986.

In 1986, the applicant would have been approximately nine years old, an age consistent with the statement made by [REDACTED] on July 22, 2006 as stated above.

On appeal, the applicant disagrees with the director's decision, requests that the director's decision be set aside in the "interest of justice," and submits two additional notarized affidavits by [REDACTED] and [REDACTED]. In his notarized affidavit dated August 10, 2006, [REDACTED] states that he knew the applicant in "1981 as a small child" and that he never stated that the applicant could have been nine or ten years old at the time. In his notarized affidavit dated August 11, 2006, [REDACTED] states that he told the immigration officer that he could not recall the applicant's "period of entry to the United States" and that he never said that the applicant entered the U.S. eight years before him. Both affiants ask for a review of the telephone interview recordings.

On appeal, neither the applicant nor the affiants provide additional information or evidence in support of the applicant's claim that he entered the United States in 1981. The applicant and the affiants focused on the director's comments regarding the telephone interviews of the affiants. At this time, the AAO is unable to verify whether the affiants were misquoted and therefore, those statements will be set aside. However, even without the inconsistencies in the affiant's statements as mentioned in the director's decision, the applicant has not met his burden of proof. The applicant has not provided credible evidence of residence in the United States relating to the period from 1982 to 1988 or of entry to the United States before January 1, 1982. The statements and affidavits provided lack credibility and probative value for the reasons noted.

Finally, the applicant suggests that the director's adjudication of the petition was unfair. The petitioner has not demonstrated any error by the director in conducting her review of the petition that would constitute a due process violation. *See Vides-Vides v. INS*, 783 F.2d 1463, 1469-70 (9th Cir. 1986); *Nicholas v. INS*, 590 F.2d 802, 809-10 (9th Cir. 1979); *Martin-Mendoza v. INS*, 499 F.2d 918, 922 (9th Cir. 1974), *cert. denied*, 419 U.S. 1113 (1975).

In this case, the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period, as well as the inconsistencies and contradictions 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 inconsistencies in the record and the lack of credible supporting documentation, it is concluded that the applicant has failed to establish by a preponderance of the evidence that he has 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.