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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

FILE:

[REDACTED]

Office: NEWARK

Date:

MSC 05 127 11361

JAN 26 2009

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. 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.

John F. Grissom, Acting 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 Director, Newark. 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. The director specifically noted that an affidavit submitted by the applicant in response to the director's Notice Of Intent To Deny (NOID) did not include proof that the affiant was in the United States during the period of time attested to, and that the affidavit failed to establish the applicant's residence in the United States for the duration of the requisite period. The director further noted that the applicant had previously filed a Form I-589 (Request For Asylum) and a Form G-325 (Biographic Information) which stated that the applicant resided in Nigeria from February of 1960 until October of 1987, which contradicts the applicant's assertions concerning his residence during the requisite period. The application was accordingly denied.

On appeal, the applicant states that the director abused his discretion in denying the application. Specifically, the applicant states that affidavits of record establish the applicant's residence in the United States for the duration of the requisite period. The applicant further states that the information on his Form I-589 and G-325 concerning his residence from February of 1960 until October of 1987 is incorrect, and that he did reside in the United States from prior to January 1, 1982 through May 4, 1988.

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 245(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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her 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).

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 (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 record contains the following evidence which is material to the applicant's claim:

- [REDACTED] submitted two sworn statements on behalf of the applicant wherein she stated that she knew the applicant from December of 1981 until June of 1982, and had contact with the applicant on other occasions in 1983 and 1984. The witness stated that she met the applicant at Nigerian social gatherings in Brooklyn and Manhattan in December of 1982. She further stated that she paid the applicant to drive her to school on

occasion in 1983 and 1984, and that she did not see the applicant after 1984 until August 28, 1987. On appeal, the witness provided proof of United States citizenship.

- [REDACTED] submitted a sworn statement on the applicant's behalf wherein he stated that he first met the applicant in New York City in 1980, and that he has known him since that time. The witness attests to the applicant's good character, but provides no additional details about the applicant's residence or activities during the requisite period.
- [REDACTED] submitted a sworn statement on behalf of the applicant wherein he stated that he shared an apartment with the applicant from March of 1982 through September of 1983. The witness does not provide the address of the apartment shared with the applicant, or any other documentation or information about the applicant's residence and activities during the requisite period.

#### OTHER EVIDENCE

The record contains a Form I-589 (Request for Political Asylum) signed by the applicant, under penalty of perjury, on August 20, 1993. In that document, the applicant states that he arrived in the United States in 1988 with a B-2 visa, and that he was subsequently employed at the Nigerian Consulate with an A2 visa. The applicant does not indicate on the Form I-687 that he was out of the country on any occasion since his date of claimed arrival in 1980, except for a single departure from October of 1986 to October of 1987 to visit his father. The claimed 1988 arrival by the applicant in the Form I-589 is inconsistent with the residence information provided by the applicant on the Form I-687. Further, if the applicant was out of the country from October of 1986 until October of 1987 as stated by the applicant on the Form I-687, he was out of the country for a period of time which disrupts his continuous residence required during the requisite period. 8 C.F.R. § 245a.2(6)(h)(i). The applicant also states on a Form G-325 (Biographic Information) that he resided in Lagos, Nigeria from February of 1960 to October of 1987. This information is inconsistent with the information provided by the applicant on the Form I-687. By the applicant's own statements, he did not reside in the United States for the duration of the requisite period.

The record of proceeding contains other material inconsistencies which the applicant has failed to reasonably explain by objective evidence. The applicant claims to have continuously resided in the United States for the duration of the requisite period. He indicates on the Form I-687 however, that he lived in the United States from March of 1980 until September of 1983, and then from October 24, 1987 until December 3, 2004, the date he signed the application. Thus, his absence from the country from September of 1983 until October 24, 1987 establishes that he is not eligible for the immigration benefit sought as the absence exceeds 45 days and represents a disruption of the applicant's claimed unlawful continuous residence. 8 C.F.R. § 245a.2(6)(h)(i).

The applicant attempts to explain the inconsistencies between the information provided on the Form I-687 and the Forms I-589 and G-325 by stating that a prior attorney put inaccurate information on the Forms I-589 and G-325. This explanation by the applicant is insufficient to explain the

discrepancies given the extent of the discrepancies noted above. For these additional reasons, the application must be denied. 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 unless the petitioner submits competent objective evidence pointing to where the truth lies. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The evidence submitted in support of the applicant's claim lacks credibility, and it cannot be determined from the record where the truth actually lies with regard to the applicant's claim.

Therefore, based upon the foregoing, 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.