U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: CHICAGO Date: JAN 08 2010

MSC 05 187 12303

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

IN BEHALF OF APPLICANT: Self-represented

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.

Perry Rhew
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, Chicago, Illinois, reopened, and denied again. The matter 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 she 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 her 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 submits a brief disputing the director's findings.

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 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 alien 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. Paragraph 11, page 6 of the CSS Settlement Agreement and paragraph 11, page 10 of the Newman Settlement Agreement.

An alien applying 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 including affidavits 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 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 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.

In an attempt to establish continuous unlawful residence in the United States since prior to January 1, 1982, the applicant submitted:

- A social security printout reflecting the applicant's earnings since 1995.
  A letter dated November 25, 2005, from [redacted] senior pastor of All Nation Assembly in Chicago Illinois, who indicated that the applicant has been an ordained minister in All Nation Assembly Church in La Grange, Illinois and has served in the church "as far back as in the 1980's."
- An affidavit from her uncle, [redacted] who indicated that the applicant resided with him in the United States "for a short while, then went back to Nigeria in 1989." The affiant indicated that he was financially responsible for the applicant's needs and maintenance.
- An affidavit from [redacted], who indicated that he met the applicant in November 1986 at the Sears Tower in Chicago.

At the time of her interview on November 29, 2005, the applicant, under oath, admitted in a signed statement to have first entered the United States in 1985 with a tourist visa, returned to Nigeria in 1986, and reentered the United States in 1987. The applicant also admitted that her Form I-687 application was prepared by an individual named [redacted], who included incorrect information. The applicant, indicated, in pertinent part:

> I called in [to [redacted] office] and the Secretary took all my data. [redacted] filled in the form and then sent it to me. He sent the documents. I called in again to tell him about the data in the application because it's wrong, [redacted] put down in my application that I braid hair since 1981. I actually braid hair in 1986 and 1987. I was not in the United States in 1981. I first entered the United States in 1985. I talked to the Secretary about this and she said not to worry.

On June 30, 2006, the director issued a Notice of Intent to Deny, which advised the applicant that based on her sworn statement she had failed to continuously reside in the United States since before January 1, 1982 through the date she attempted to file her application.

The applicant, in response, recanted her previous statement and indicated, "I came to the US in 1980, after my high school. I remained in the US through the date I was front-desk." The applicant indicated that she has applied for residency in 1996, 2006 and 2005, but each time she **was denied. The applicant requested that her application be reconsidered. The applicant** submitted a letter dated July 29, 2006, from an individual with an indecipherable signature, who claimed to be the acting president of [redacted] in Chicago, Illinois. The affiant indicated that the club, which was established in 1979, is an association of the Edo tribe in Nigeria and that the applicant has been a member since 1980. The affiant indicated that [s]he is unable to obtain the applicant's record as the president of the association passed away in 2000 and the club has not been able to retrieve records that were in his possession. The applicant also submitted an award dated in 2004 from her current employer, a fee agreement for legal services dated in 1996 and a letter dated April 9, 2001, from a professor at Harry S. Truman College in regards to the applicant's moral character.

In denying the application on September 14, 2006, the director noted that upon an investigation it was revealed that [redacted] was never registered as an Illinois organization and was not incorporated until June 28, 2005. The director determined that the applicant had failed to submit sufficient credible evidence establishing her continuous residence in the United States since prior to January 1, 1982.

On appeal, the applicant provides documentation establishing that [redacted] has been recognized and registered as an Illinois organization since February 22, 1994.

The statements issued by the applicant have been considered. However, the documents discussed above do not to support a finding that the applicant entered the United States prior to January 1, 1982, and resided since that date through the date she attempted to file his application.

The AAO maintains plenary power to review each appeal on a de novo basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); see also, Janka v. U.S. Dept. of Transp., NTSB, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's de novo authority has been long recognized by the federal courts. See, e.g. Dor v. INS, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

As noted above, the applicant admitted in signed statement that she first entered the United States in 1985; however, she later recanted her statement. An inference cannot be drawn that the information or documentation submitted is now accurate simply because the applicant recants her admission. Even in cases where the burden of proof is upon the government, such as in deportation proceedings, a previous sworn statement voluntarily made by an alien is admissible, and is not in violation of due process or fair hearing. *Matter of Pang*, 11 I&N Dec. 213 (BIA 1965).

The applicant filed a Form I-140, Petition for Prospective Immigrant Employee, on January 30, 1997.[1] Along with the Form I-140, the applicant submitted:

- Part B, Statement of Qualifications of Alien, which reflects that the applicant attended the University of Benin in Nigeria from September 1980 to June 1984 and the University of Ibadan in Nigeria from September 1985 to April 1987 and from September 1987 to October 1992.
- A statement in support of a National Interest Waiver, in which the applicant indicated that she joined the faculty of the Department of Veterinary Microbiology and Parasitology at the University of Ibadan in 1985, after she obtained a bachelor's degree in Zoology in 1984 from the University of Benin.
- Her resume which indicates that she attended the University of Benin from 1980 to 1984 and the University of Ibadan from 1986 to 1992.
- Copies of her diplomas from the University of Ibadan.

A second Form I-140 was filed by the University of Illinois at Chicago, School of Public Health on behalf of the applicant on April 26, 2001.[2] Accompanying the Form I-140 is:

- Part B, Statement of Qualifications of Alien, reflects that the applicant attended the University of Benin in Nigeria from September 1980 to June 1984 and the University of Ibadan in Nigeria from September 1985 to April 1987 and from September 1987 to October 1992.
- Another statement in support of the National Interest Waiver, in which the applicant indicated that she joined the faculty of the Department of Veterinary Microbiology and Parasitology at the University of Ibadan in 1985, after she obtained a bachelor's degree in Zoology in 1984 from the University of Benin.
- The applicant's resume which indicates that she attended the University of Benin in 1984 and the University of Ibadan in 1987, and was a lecturer from 1987 to 1989 at the University of Ibadan.
- A letter dated April 11, 2001, from [redacted], who indicated that he met the applicant over 15 years ago while the applicant was an undergraduate at the University of Benin.

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[1] The Form I-140 petition was denied on July 31, 1997.

[2] The Form I-I40 petition was denied on October 31, 2001. The appeal from the denial of this petition was dismissed by the AAO on March 19, 2003.

These facts tend to establish that the applicant utilized documents in a fraudulent manner in an attempt to support her claim of residence in the United States during the requisite period. Based on the foregoing, the applicant neither entered the United States prior to January 1, 1982, nor maintained continuous unlawful residence through the date she lawfully entered the United States as required under 8 C.F.R. § 245a.2(b)(1). 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.