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**U.S. Citizenship
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FILE: [REDACTED] Office: HOUSTON Date: **SEP 18 2008**
MSC 05 334 12255

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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, Houston. 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 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 asserts that she has established her unlawful residence for the requisite time period, that she is qualified under Section 245A of the Act and the CSS/Newman settlement agreements, and that her application for temporary resident status should be granted. In particular, the applicant asserts that under the circumstances of this particular case, the evidence submitted is sufficient to meet her burden of proof. The applicant notes that she was four years of age when she entered the United States, that her parents are now deceased, and that it is difficult, if not impossible, to obtain evidence due to those circumstances and the passage of time.

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 has furnished sufficient credible evidence to demonstrate that she resided in the United States for the duration of the requisite period. Here, the applicant submitted the following documentary evidence that is relevant to the requisite period:

Witness Statements

- [REDACTED] submitted a sworn affidavit wherein he states that he knew the applicant's mother in 1981. The affiant states that he and the applicant's mother “squatted briefly together in New York,” along with the applicant who was then three years of age, after the affiant's arrival in the United States. The witness provides no additional information.
- [REDACTED] submitted a notarized statement wherein he states that he knew the applicant and her mother from 1981 to 1988. The witness provides no additional information.

- [REDACTED] provides a notarized statement wherein he states that he knew the applicant and her late mother, and that the two of them lived in New York from 1981 to 1988. The witness provides no additional information.
- [REDACTED] provides a statement notarized by a notary public of the Supreme Court of Nigeria wherein she states that the applicant is her niece. The witness states that she searched for records of the applicant's deceased mother relating to the time that the applicant and her mother resided in the United States. The witness was, however, unable to locate any such records. The witness does state that based upon her personal records (none of which were provided) the applicant and the applicant's mother traveled to the United States in October of 1981, thereafter residing in New York. The witness states that the applicant's mother supported her family doing housekeeping, sewing and other odd jobs. The witness further states that the applicant was enrolled in St. Benedict Private School and that she remained in New York with her mother until June of 1988 when they returned to Nigeria due to the illness of the applicant's mother. The affiant also identifies three New York addresses for the applicant and her mother. The address that the affiant identifies for the applicant and her mother commencing in August of 1984, is the only address listed by the applicant on the Form I-687 for the time period 1981 – 1988.
- [REDACTED] provided a notarized statement wherein she states that she has known the applicant since she was born, and that the applicant came to the United States with her mother in 1981 where the two resided until they departed the country in 1988. The witness provides no additional relevant information.
- [REDACTED] provided a statement notarized in Nigeria wherein he states that the applicant lived in New York with her mother "in the 1980s." The witness states that the applicant's mother was a member of an unnamed village association that met at [REDACTED], New York, and that the applicant used to accompany her mother to meetings. Mr. [REDACTED] states that the applicant left the United States with her mother in 1988 and returned to Nigeria.

Applicant Statement

- The applicant provided a sworn statement to a United States immigration officer on October 4, 2006 wherein she states that she first entered the United States around Christmas of 1981. The applicant (date of birth – 9/29/87) stated that she remained in the United States until 1988, but does not remember: the month that she returned to Nigeria; where she lived in New York from 1981 – 1988; the name of the school that she attended; or where her mother worked during their residence in the United States.

Although the applicant has submitted several affidavits and her own sworn statement in support of her application, the applicant has not established her continuous unlawful residence in the United States for the duration of the requisite period. As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality; 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.

The witness statements provide generally that the witnesses have known the applicant for a particular period of time, and/or have knowledge that the applicant has continuously resided in the United States during the requisite period. [REDACTED] purports to be the aunt of the applicant. The remaining witnesses state simply that they know the applicant, but do not provide details of their association with the applicant or her deceased mother. The applicant's sworn statement states that she has resided in the United States for the duration of the requisite period, but provides no details of her residence in this country. None of the witness statements provide concrete information, specific to the applicant and generated by the asserted associations with her, that would reflect and corroborate the extent of those associations and demonstrate that they were a sufficient basis for reliable knowledge about the applicant's residence during the time addressed in the affidavits. To be considered probative and credible, witness affidavits must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. Their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the affiant does, by virtue of that relationship, have knowledge of the facts alleged. Upon review, the AAO finds that, individually and together, the witness statements do not indicate that their assertions are probably true. Therefore, they have little probative value.

Further, the sworn statement of the applicant is insufficient alone to establish the applicant's continuous residence in the United States for the requisite period. As previously noted, in order 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).

Attestation

The applicant submitted an attestation from [REDACTED], who lists himself as secretary of a development organization (the title of which is not legible from the photocopied letter head provided) in New York. Mr. [REDACTED] states that the applicant's mother was a member of his association between the years of 1981 and 1988, and that the applicant attended periodic meetings with her mother.

The regulation at 8 C.F.R. § 245a.2(d)(3)(v), as hereinafter set forth, provides requirements for attestations to an applicant's residence made on behalf of an applicant by churches, unions, or other organizations:

- (v) Attestations by churches, unions, or other organizations to the applicant's residence by letter which:
 - (A) Identifies applicant by name;

- (B) Is signed by an official (whose title is shown);
- (C) Shows inclusive dates of membership;
- (D) States the address where applicant resided during membership period;
- (E) Includes the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery;
- (F) Establishes how the author knows the applicant; and
- (G) Establishes the origin of the information being attested to.

The attestation provided is of little evidentiary value as it does not: state the address where the applicant resided with her mother during the period of claimed membership; establish how the applicant knows the applicant; or establish the origin of the information being attested to. The attestation states that the applicant and her mother attended "periodic" association meetings, but does not state how frequently those meetings occurred, where they occurred, or if the association even possesses membership records. The attestation is of no probative value and shall be afforded little weight.

Other Evidence

The applicant provided a statement from [REDACTED], the Head Mistress of the Beryl Education Centre in Nigeria. The statement indicates that the school's register shows the applicant transferred from a foreign school in New York, and was admitted "in the 1988/89 sessions." The statement does not include copies of the school's register referred to. Further, [REDACTED] states that the school does not have a copy of the applicant's transfer certificate which was used for the applicant's admission as those records are more than 10 years old. The statement provides no other relevant information and is of little probative value as the information provided is not verifiable. Further, the information provided lacks sufficient detail to establish the applicant's attendance at the school during the time period cited.

The evidence submitted by the applicant, and listed above, does not establish the applicant's continuous residence in the United States for the requisite time period. Taken as a whole, the evidence submitted lacks sufficient detail to establish the applicant's presence in this country for the requisite time period. The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detracts from the credibility of his claim. As previously stated, pursuant to 8 C.F.R. § 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 reliance upon documents with minimal probative value, it is concluded that she has failed to establish continuous residence in an unlawful status in the United States during the requisite period.

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that she 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.