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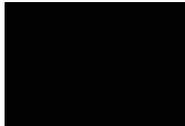
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
*Office of Administrative Appeals* MS 2090  
Washington, DC 20529-2090

**U.S. Citizenship  
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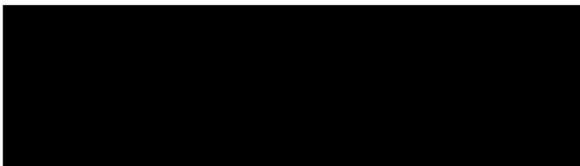
**AUG 21 2009**

IN RE: Applicant:



APPLICATION: Application for Temporary Resident Status under Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:



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) on 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) on February 17, 2004 (CSS/Newman Settlement Agreements), was denied by the director in Los Angeles, California. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The director denied the application on the grounds that the applicant failed to establish that she resided continuously in the United States in an unlawful status from before January 1, 1982, and was continuously physically present in the United States from November 6, 1986, through the date of attempted filing during the original one-year application period for legalization that ended on May 4, 1988.

On appeal counsel asserts that the director did not give proper consideration and due weight to the letter and affidavit evidence in the record.

An applicant for temporary resident status under section 245A of the Immigration and Nationality Act (the Act) must establish his or her entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status from before January 1, 1982 through the date the application is filed. *See* section 245A(a)(2) of the Act, 8 U.S.C. § 1255a(a)(2). The applicant must also establish his or her continuous physical presence in the United States since November 6, 1986. *See* 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. *See* 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 the regulation at 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 from May 5, 1987 to May 4, 1988. *See* CSS Settlement Agreement, paragraph 11 at page 6; Newman Settlement Agreement, paragraph 11 at page 10.

An applicant for temporary resident status has the burden to establish 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).

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 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.

The regulations provide an illustrative list of documents – which includes affidavits and “any other relevant document” – that an applicant may submit as evidence of continuous residence in the United States during the requisite period under section 245A of the Act. *See* 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The applicant, a native of Nigeria who claims to have lived in the United States since January 1981, filed her application for temporary resident status under section 245A of the Act (Form I-687), together with a Form I-687 Supplement, CSS/Newman (LULAC) Class Membership Worksheet, on July 15, 2005.

On November 22, 2005, the director issued a Notice of Intent to Deny, indicating that there was no evidence of the applicant’s continuous unlawful residence and continuous physical presence in the United States during the requisite time periods to qualify for temporary resident status under section 245A of the Act.

The applicant responded on December 30, 2005, with the following evidence of her residence in the United States during the 1980s:

A notarized letter by [REDACTED] a resident of Moreno Valley, California, dated December 10, 2005, stating that he knew the applicant had lived in the United States since 1981, and had seen her at various Nigerian functions and gatherings over the years.

- A letter by [REDACTED] of the Tabernacle Community Church in Los Angeles, California, dated December 20, 2005, stating that he had known the applicant since 1981 and that she and her family were members of the church and had worked in many capacities.

On March 11, 2007, the applicant was interviewed in the Los Angeles office, after which the adjudicating officer issued a Form I-72 on April 11, 2007, requesting the applicant to submit additional evidence of her residence in the United States during the years 1982-1988.

The applicant responded on July 3, 2007, with the following documentation pertaining to her claim of residence:

- A notarized letter by [REDACTED] a resident of Moreno Valley, California, dated May 23, 2007, stating that she had known the applicant since 1983 and had attended several religious programs with her.
- An affidavit by [REDACTED], a resident of Riverdale, Georgia, dated June 15, 2007, stating that the applicant had been her family's caregiver since the early 1980s.

On July 27, 2007, the director issued a Notice of Decision denying the application. The director determined that the evidence of record failed to establish the applicant's continuous residence and continuous physical presence in the United States during the requisite periods in the 1980s to qualify for temporary resident status under the Act.

On appeal counsel asserts that the director did not give proper consideration and due weight to the evidence submitted by the applicant.

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).

The salient issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that she resided continuously in the United States in an unlawful status from before January 1, 1982 through the date she attempted to file a Form I-687 during the original one-year application period for legalization that ended on May 4, 1988. The AAO determines that she has not.

The applicant has no contemporary documentation from the 1980s demonstrating that she resided in the United States during the years 1981-1988. For someone claiming to have lived and worked in this country continuously since January 1981, it is noteworthy that she is unable to produce a solitary document dating from that decade.

The four affidavits and letters submitted by friends of the applicant all have minimalist formats with little personal input by the authors. Considering how long they all claim to have known the

applicant, it is remarkable how little information they provide. None of the authors provides any details about the date and circumstances of meeting the applicant in the early 1980s, and they say little about their interaction with the applicant over the years. None of the authors provides any information about the where the applicant lived during the 1980s, and they provide only sketchy information about where she worked. Nor have the authors submitted any documentary evidence – such as photographs, letters, and the like – of their personal relationship with the applicant in the United States during the 1980s. In view of these substantive shortcomings, the AAO finds that the affidavits have little probative value. They are not persuasive evidence of the applicant's continuous unlawful residence in the United States during the years 1981-1988.

The AAO also notes, with regard to the letter from [REDACTED], that the regulation at 8 C.F.R. § 245a.4(b)(iv)(E) provides that attestations by churches, unions, and other organizations as to the applicant's residence must (1) identify the applicant by name; (2) be signed by an official whose title is shown; (3) show inclusive dates of membership; (4) state the address where the applicant resided during the membership period; (5) include the seal of the church impressed on the letter or the letterhead of the church if it has letterhead stationery; (6) establish how the church official knows the applicant; and (7) establish the origin of the information about the applicant.

[REDACTED] letter does not meet all of the above criteria. In particular, it does not show when the applicant became a member of the church; does not state where the applicant lived during his membership period, especially during the 1980s; does not establish how [REDACTED] knows the applicant, such as the date and circumstances of their meeting and the extent of their interaction over the years; and does not establish the origin of [REDACTED] information about the applicant's membership since 1981, such as whether it comes from church records or is based on the hearsay of others. Accordingly, the letter from [REDACTED] has little probative value as evidence of the applicant's continuous unlawful residence in the United States during the years 1981-1988.

Based on the foregoing analysis of the evidence, the AAO determines that the applicant has failed to establish that she resided continuously in the United States in an unlawful status from before January 1, 1982 through the date she attempted to file a Form I-687 during the original one-year application period for legalization that ended on May 4, 1988. Accordingly, the applicant is ineligible for temporary resident status under section 245A of the Act.

The appeal will be dismissed, and the application denied.

**ORDER:** The appeal is dismissed. This decision constitutes a final notice of ineligibility.