

PUBLIC COPY

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

L1

[REDACTED]

FILE:

MSC-06-029-12681

Office: BOSTON

Date:

FEB 25 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 District Director, Boston. 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, on October 29, 2005 (together, the I-687 Application). The director noted that during the applicant's November 7, 2006 interview, he stated that he left the United States for Nigeria in December 1987 and was admitted into the United States on January 31, 2005 with a visitor's visa. The director found that the applicant was absent from the United States for over 45 days during the period from January 1, 1982 to May 4, 1988. The director, therefore, concluded that he had not resided continuously in the United States for the requisite period and was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, counsel submitted a Form I-694 Notice of Appeal of Decision Under Section 210 or 245A, and a brief. On appeal, counsel states that the applicant initially attempted to file a Form I-687 in July 1987 but was "front-desked" and that according to the CSS/Newman Settlement Agreements, he need only demonstrate continuous presence from January 1, 1982 to July 1987. The affidavit of [REDACTED] corroborates the applicant's statement, that he was "front-desked" in July 1987. The AAO agrees with counsel that according to the CSS/Newman Settlement Agreements, the date of filing is the date that an applicant was "front-desked." The AAO withdraws the director's statements regarding the applicant's absence from the United States between December 1987 and January 2005.

The application may not be approved, however, as the applicant has not established that he entered the United States before January 1, 1982 and resided in the United States from January 1, 1982 to July 1987. On September 26, 2008, the AAO issued a request for evidence (RFE) for evidence that the applicant entered the United States prior to January 1, 1982 and resided in the United States for the entire requisite period. In response to the RFE, counsel submitted four affidavits and other documents. Therefore, the record is complete.

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).

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) 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 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. 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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's 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).

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. See 8 C.F.R. § 245a.2(d)(6). The weight to be given any affidavit depends on the totality of the circumstances, and a number of factors must be considered. More weight will be given to an affidavit in which the affiant indicates personal knowledge of the applicant's whereabouts during the time period in question rather than a fill-in-the-blank affidavit that provides generic information. The regulations provide specific guidance on the sufficiency of documentation when proving residence through evidence of past employment or attestations by churches or other organizations. 8 C.F.R. §§ 245a.2(d)(3)(i) and (v).

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.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he entered before 1982 and continuously resided in the United States for the requisite period.

The applicant has submitted several affidavits; a certificate; a copy of the applicant's identity card issued by the University of Nigeria Teaching Hospital Enugu; a copy of the applicant's Nigerian driver's license issued on March 5, 2001; a copy of the applicant's visitor's visa issued on November 22, 2004 in Lagos; a copy of the applicant's entry stamp stating that he was admitted into the United States on January 31, 2005; the applicant's Form I-94 card valid from May 1, 2005 to September 30, 2005; the applicant's employment authorization card issued on February 23, 2006; a copy of the applicant's Massachusetts driver's license; and a copy of a certificate of credit from the American Heart Association dated February 21, 2005 indicating that the applicant attended an International Stroke Conference from February 2 -- 4, 2005. The applicant's identification card, employment authorization card, and Massachusetts driver's license are evidence of the applicant's identity, but do not demonstrate that he entered before January 1, 1982 and resided in the United States for the requisite period.

Some of the evidence submitted indicates that the applicant resided in the United States after May 4, 1988 and is not probative of residence before that date. The following applies to the requisite time period:

- **Two notarized affidavits from [REDACTED]** dated December 10, 2005 and October 21, 2008. The affiant states that she first saw the applicant with his uncle, [REDACTED], at the Morning Star Baptist Church in the Mattapan section of Boston in December 1981. The affiant states that she was "involved" with [REDACTED] for most of the 1980s. The affiant also states that "through the years, until [the applicant] went back to Nigeria, [she] would see him with some regularity because [REDACTED] would bring him along to social functions." The affiant lists several functions and locations and adds that occasionally the affiant and the applicant "went out together for a lunch at KFC or Burger King at Dorchester or Downtown and dinner at Brother's restaurant at Mattapan." The affiant states that she "would visit [REDACTED] frequently at his house, [and] would often see [the applicant] running around with his friends or just relaxing at [REDACTED] home." The affiant states that she and [REDACTED] broke up after a few years but that she asked him about the applicant and he told her that the applicant returned to Nigeria in December 1987 in order to continue his education. The affiant states that she has personal knowledge that the applicant lived with his uncle in Massachusetts from December 1981 through December 1987. Although the affiant states that she has known the applicant since 1981, the statement does not supply enough details to lend credibility to a 27-year relationship with the applicant. For instance, the affiant does not indicate

how she dates her initial meeting with the applicant or how frequently she had contact with the applicant. Further, the affiant includes information about which she has no personal knowledge. Given these deficiencies, these affidavits have minimal probative value in supporting the applicant's claims that he entered the United States prior to January 1, 1982 and resided in the United States for the entire requisite period.

- A notarized affidavit from [REDACTED]. The affiant states that he knows the applicant personally and that he first met the applicant at his uncle's house during a Sunday visit around May 1981. The affiant states that he used to visit [REDACTED] house, the applicant's uncle, until "around the Spring of 1990 when [REDACTED] departed the U.S.A. for Nigeria." The affiant states that during the "mid eighties," the applicant "usually accompanied his uncle to watch soccer competitions at Fenway Park in Boston." The affiant also states that the applicant played for the Nigerian selected team in Boston between 1986 and 1987, but does not state how he knows that the applicant attended games with his uncle or played for the Nigerian selected team. The affiant states that the applicant's uncle told him that the applicant's legalization applicant was denied in July 1987 and that the applicant returned to Nigeria "in the third week of December 1987." Although the affiant states that he has known the applicant since 1981, the statement does not supply enough details to lend credibility to a 27-year relationship with the applicant. For instance, the affiant does not indicate how he dates his initial meeting with the applicant or how frequently he had contact with the applicant. Further, the affiant includes information about which he has no personal knowledge. Given these deficiencies, this affidavit has minimal probative value in supporting the applicant's claims that he entered the United States prior to January 1, 1982 and resided in the United States for the entire requisite period.
- A notarized affidavit from [REDACTED]. The affiant is the applicant's father and resides in Nigeria. The affiant states that the applicant was taken to the United States sometime in March 1981 by his uncle, [REDACTED]. The affiant states that the applicant lived in Boston with [REDACTED] and returned home in December 1986. The affiant states that the applicant went back to the United States "in the second week of January 1987" and that he asked the applicant to stay in the United States. The affiant states that the applicant "complained [that] he could not get into school [in the United States] because he did not have [an] international student visa." The affiant states that the applicant returned to Nigeria in December 1987 and resumed his education in Nigeria. Although the affiant states that the applicant was in the United States with Clement Ubah from March 1981 to December 1987, the affiant lived in Nigeria during that time and does not have personal knowledge that his son resided in the United States during that time. Given these deficiencies, this affidavit has minimal probative value in supporting the applicant's claims that he entered the United States prior to January 1, 1982 and resided in the United States for the entire requisite period.

- A notarized affidavit from [REDACTED] The affiant is the applicant's sister and resides in Nigeria. The affiant states that the applicant was taken to the United States sometime in March 1981 by his uncle, [REDACTED] in order to "obtain a high class education." The affiant states that the applicant lived in Boston with [REDACTED] and communicated with her through the mail. The affiant states that the applicant returned home in December 1986 and re-entered the United States "through Canada in the middle of January 1987." The affiant states that during his visit to Nigeria, the applicant lamented his inability enter the U.S. school system because he did not have an international student visa. The affiant states that the applicant returned to Nigeria in December 1987 and resumed his education in Nigeria. Although the affiant states that the applicant was in the United States with [REDACTED] from March 1981 to December 1987, the affiant lived in Nigeria during that time and does not have personal knowledge that her brother resided in the United States during that time. Further, the affiant states that the applicant came to the United States in March 1981 to "obtain a high class education," however, there is no evidence in the record of proceeding that the applicant attended school in the United States from 1981 to 1987. Given these deficiencies, this affidavit has minimal probative value in supporting the applicant's claims that he entered the United States prior to January 1, 1982 and resided in the United States for the entire requisite period.
- Notarized affidavits submitted by [REDACTED] and [REDACTED] state that the affiants first met the applicant in 1981. The affidavits also state that the applicant returned to Nigeria to continue his education. Ms. [REDACTED] states that the applicant returned to Nigeria in December 1987 and [REDACTED] only states that the applicant returned to Nigeria in 1987. Neither of the affidavits provide detail sufficient to demonstrate a long-term relationship with the applicant. For instance, the affiants do not indicate how they date their initial meeting with the applicant or how frequently they had contact with the applicant. Further, the affiants provide no specific information about the applicant's residence and whereabouts in the United States during the requisite period. Given these deficiencies, these affidavits have minimal probative value in supporting the applicant's claims that he entered the United States prior to January 1, 1982 and resided in the United States for the entire requisite period.

The remaining evidence in the record is comprised of the applicant's statements and application forms, in which he claims to have entered the United States in March 1981. The AAO notes that the applicant was a minor during the requisite time period and 12 years old in March 1981. There is no evidence in record of proceeding that the applicant attended school in the United States. The affidavits in the record of proceeding state that the applicant returned to Nigeria in 1987 because he was unable to continue his education in the United States without a student visa. The applicant's sister states that his primary reason for entering the United States in March 1981 was in order to obtain an education. Neither counsel nor the applicant has submitted evidence that the applicant attended school in the United States. Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the

remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The applicant has not submitted any additional evidence in support of his claim that he was physically present or had continuous residence in the United States during the entire requisite period or that he entered the United States in 1981.

The director issued a notice of intent to deny (NOID) on November 22, 2005. The director denied the application for temporary residence on February 5, 2007.

On appeal, counsel addresses the director's concerns and submits additional affidavits. As noted above, 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. Upon a *de novo* review of all of the evidence in the record, the AAO agrees with the director that the evidence submitted by the applicant has not established that he is eligible for the benefit sought.

In this case, the absence of sufficient credible and probative documentation to corroborate the applicant's claim of continuous residence for the requisite period seriously detracts 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 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.