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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
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U.S. Citizenship  
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FILE: [REDACTED] MSC 06 028 12886

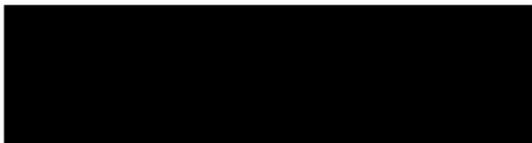
Office: HOUSTON

Date: OCT 30 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:



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 "Perry Rhew".

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, 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, and a Form I-687 Supplement, CSS/Newman (LULAC) Class Membership Worksheet. The director denied the application because the applicant did not establish that she continuously resided in the United States for the duration of the requisite period. In so finding, the director determined that the affidavit submitted by [REDACTED] in the applicant's behalf was not credible. In that document, the affiant stated she had obtained a passport in the applicants' name in Nigeria, traveled with that passport three times in Europe in 1983, 1985, and in 1986 so the passport would show that the applicant had traveled abroad a few times and returned back to Nigeria. That way she would have a better chance of securing an American visa when she returned to Nigeria from the United States.

On appeal, counsel submits additional evidence for consideration. Counsel does not address the director's concerns regarding the affidavit submitted by [REDACTED]

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 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).

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 request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, to deny the application.

The pertinent evidence in the record is described below.

1. A notarized statement from [REDACTED], the applicant’s father, who states he knows the applicant has resided in the United States since 1981.
2. A notarized statement from [REDACTED] who states the applicant moved into her home in [REDACTED] at [REDACTED] in Houston, Texas, in January 1981 and resided with her at that address until February 1982.
3. A letter from [REDACTED] of the [REDACTED] at [REDACTED] [REDACTED] in Houston, Texas, who states that the applicant resided in unit # [REDACTED] from January 1981 through January 1982. She also states that the property was named [REDACTED] at that time.
4. The applicant’s State of Texas marriage license reflecting she was married in Houston, Texas, on May 18, 1987.
5. The applicant’s Social Security Statement dated January 10, 2005, showing she earned Social Security and Medicare taxable income during 1987.

[REDACTED] the applicant’s father, (Item # 1 above) claims to have known the applicant resided in the United States for a substantial length of time, in this case since 1981. However, his statement is not accompanied by any documentary evidence such as photographs, letters or other documents establishing his personal relationship with the applicant in the United States during the requisite period. In view of these substantive shortcomings, the AAO finds that the statement has little probative value. It is not persuasive evidence of the applicant’s continuous

unlawful residence in the United States from before January 1, 1982 through the date the applicant attempted to file a Form I-687 or was caused not to timely file during the original filing period from May 5, 1987 ending on May 4, 1988. On her Form I-687, the applicant stated she resided in Huntsville, Alabama, from November 1981 to June 1986. However, [REDACTED] and [REDACTED] (Items # 2 and # 3) state that she resided in Houston, Texas, from January 1981 until January 1982. The applicant's marriage license and Social Security Statement (Items # 4 and # 5) establish that she resided in the United States during part of the requisite period.

The record reflects that on July 17, 1990, a Form I-130, Petition for Alien Relative, was filed on behalf of the applicant by her spouse, then [REDACTED]. Accompanying the Form I-130 is a Form I-485 application and a Form G-325A, Biographic Information, signed by the applicant on December 7, 1989. The applicant indicated on her Form G-325A that she resided in Benin, Nigeria, from January 1978 to September 1986. On the Form I-485 application, the applicant indicated that she was issued a nonimmigrant visitor visa at the United States Embassy in Lagos, Nigeria on May 13, 1986 and that she entered the United States on September 11, 1986. However, on her Form I-687, she indicated that she was residing in Huntsville, Alabama from November 1981 to June 1986. It is noted that her entry as a nonimmigrant visitor on September 11, 1986 broke the continuity of any claimed illegal residence in the United States during the requisite period.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. Further, the applicant must resolve any inconsistencies in the record with competent, independent, objective evidence. Attempts to explain or reconcile such inconsistencies, absent competent objective evidence sufficient to demonstrate where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). These inconsistencies cast doubt not only on the evidence containing the conflicts, but on all of the applicant's evidence and all of her assertions.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate entry into the United States prior to January 1, 1982, and continuous residence during the requisite period. The applicant's asserted residential history on her Form I-687 is accompanied by inconsistent evidence.

Based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that she entered the United States before January 1, 1982 and 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*. Therefore, the applicant is ineligible for temporary resident status under section 245A of the Act.

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