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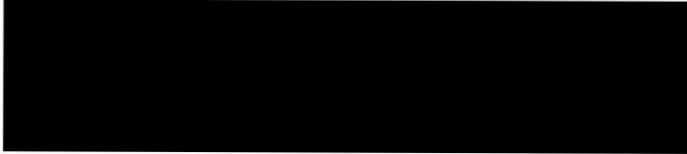
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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FILE: [REDACTED]
MSC-06 081 12517

Office: FAIRFAX

Date: **JAN 14 2010**

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.

Perry J. 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 in Fairfax, Virginia. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, a native of Nigeria who claims to have lived in the United States since October 1981, 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 December 20, 2005. The director denied the application, finding that the applicant had not established by a preponderance of the evidence that he had continuously resided in the United States in an unlawful status for the duration of the requisite period.

On appeal counsel asserts that the applicant has submitted sufficient credible evidence to establish that he meets the continuous residence requirement for adjustment of status under section 245A of the Act.

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 (1) entered the United States before January 1, 1982 and (2) has continuously resided in the United States in an unlawful status for the requisite period of time. Here, the applicant has failed to meet his burden.

The applicant claims that he entered the United States with her mother and siblings on October 1, 1981, but did not submit any objective documentation of his entry in 1981. The record reflects that the applicant, who was born on February 19, 1977, was 4 years old at the time of his alleged entry into the United States. As evidence of his residence in the United States, the applicant submitted the following documents:

- School Report Cards from Boulder Valley Public Schools indicating that the applicant attended Whittier Elementary School beginning with the 1986-1987 school year and thereafter.

- A photocopy of 5th grade class picture from Whittier Elementary School, Boulder, Colorado, showing the applicant as one of the students in [REDACTED] class.
- A letter signed by [REDACTED] University Hill Elementary, Boulder, Colorado, dated June 3, 1986, stating that the applicant indicating that the applicant will be assigned to [REDACTED] s 5th grade class for the school year beginning August 25, 1986.
- A series of affidavits from the applicant's parents and other individuals attesting that the applicant entered the United States in 1981 and has continuously resided in the United States through the requisite period.

The school records from Boulder Valley Public Schools, Boulder, Colorado, showing that the applicant started attending school from 1986-1987 school year, are credible evidence that the applicant was in the United States from 1986 onwards. The AAO will focus its review in this proceeding to evidence submitted by the applicant to establish his continuous residence in the United States from before January 1, 1982 through the end of 1985.

The record reflects that the applicant did not submit objective evidence to establish his entry into the United States in 1981. The applicant did submit affidavits from his mother and father as well as documents issued to his parents during the 1980s. The AAO has reviewed the affidavits and find that they do not establish he continuously resided in the United States for the duration of the requisite period.

The affidavit from the applicant's mother states that she traveled with her children including the applicant to the United States in 1981 to join her husband, that she home schooled the applicant and her other children from 1981 until the applicant entered Boulder Valley Public School in 1985. The affiant did not submit any documentation in support of her assertion that she home schooled the applicant. Other than the report card from Whittier Elementary School for the school year 1986-1987, there is no other document placing the applicant in the United States before 1986. The affiant did not submit any medical or immunization records which, a child of 4 years old residing in the United States in 1981 would be expected to have, to establish the applicant's continuous residence and continuous physical presence in the United States from the alleged entry in 1981 to 1986, when the applicant started school.

Additionally, the affiant did not submit any document to establish her identity and residence in the United States from before January 1, 1982 through June 1985 -- which is the date of the earliest document addressed to the affiant in the United States. The affidavit from the applicant's mother is not accompanied by any documentary evidence -- such as photographs, letters, and the like -- demonstrating her personal relationship with the applicant in the United States during the 1980s. In view of these substantive shortcomings, and affidavit 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 requisite period.

In similar vain, the affidavits from the other individuals attesting to the applicant's continuous residence in the United States from before January 1, 1982 through the requisite period is not persuasive. The affiants provided very few details about the applicant's life in the United States and the nature and extent of their interactions with him over the years. The affidavits are not accompanied by documentary evidence – such as photographs, letters, and the like – of the affiants' personal relationships with the applicant in the United States during the 1980s. For the reasons discussed above, the affidavits have little probative values as credible evidence of the applicant's continuous unlawful residence in the United States from before January 1, 1982 through the requisite period.

As discussed above, the applicant has submitted sufficient credible evidence to establish his residence in the United States from 1986, he has however, failed to submit sufficient credible evidence to establish that he entered the United States before January 1, 1982 and resided continuously in the country through the date of filing his application.

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.

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