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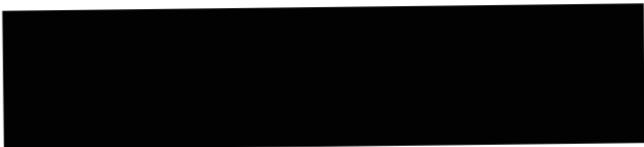
IN RE:

Applicant:



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 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 of the Baltimore office. 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 (LULAC) Class Membership Worksheet. The director denied the application, finding that the applicant was ineligible for adjustment to temporary resident status because he 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 time period.

On appeal, the applicant asserts that the evidence which he previously submitted establishes by a preponderance of the evidence that he continuously resided in the United States in an unlawful status for the duration of the requisite time period. The applicant has not submitted any additional evidence on appeal.¹ The AAO has considered the applicant's assertions, reviewed all of the evidence, and has made a *de novo* decision based on the record and the AAO's assessment of the credibility, relevance and probative value of the evidence.²

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. The applicant must also establish that he or she has been continuously physically present in the United States since November 6, 1986. 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, and is

¹ The record reflects that the applicant's FOIA request, NRC2008037245, was processed on June 15, 2009.

² 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 long been recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n.9 (2d Cir. 1989).

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. 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, "[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 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. 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. *Matter of Ho*, 19 I & N Dec. 582, 591-592 (BIA).

The issue in this proceeding is whether the applicant has established that he (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. The documentation that the applicant submits in support of his claim to have arrived in the United States before January 1982 and lived in an unlawful status during the requisite period consists of witness statements and documents. The AAO has reviewed each document in its entirety to determine the applicant's eligibility; however, the AAO will not quote each witness statement in this decision. Some of the evidence

submitted indicates that the applicant resided in the United States after May 4, 1988; however, because evidence of residence after May 4, 1988 is not probative of residence during the requisite time period, it shall not be discussed.

The record contains witness statements from the applicant's cousins, [REDACTED] and [REDACTED]. The statements are general in nature and state that the witnesses have knowledge of the applicant's residence in the United States for the entire requisite period.

Although the witnesses claim to have personal knowledge of the applicant's residence in the United States during the requisite period, the witness statements do not provide concrete information, specific to the applicant and generated by the asserted associations with him, which 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 in the United States during the requisite period. To be considered probative and credible, witness statements must do more than simply state that a witness 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 it probably did exist and that the witness, by virtue of that relationship, does have knowledge of the facts alleged. For instance, the witnesses do not state how they date their initial meeting with the applicant in the United States or specify social gatherings, other special occasions or social events when they saw and communicated with the applicant during the requisite period. The witnesses also do not state how frequently they had contact with the applicant during the requisite period. The witnesses do not provide sufficient details that would lend credence to their claimed knowledge of the applicant's residence in the United States during the requisite period. For these reasons the AAO finds that the witness statements do not indicate that their assertions are probably true.

The applicant has submitted a copy of page 7 of passport number [REDACTED]. In judging the probative value and credibility of the evidence submitted, greater weight will be given to the submission of original documentation. 8 C.F.R. § 245a.2(d)(6). The passport page contains a single-entry visitor's visa issued in Lagos on December 24, 1980, and a New York entry stamp dated December 26, 1980. The record also contains a copy of a credit report from CBC Credit Services of Dayton, which states that the applicant was first issued a Social Security number in 1980 in Alabama. These documents are some evidence in support of the applicant's presence in the United States on December 26, 1980.

The record contains a copy of pages 8 and 9 of passport 389245. As stated above, in judging the probative value and credibility of the evidence submitted, greater weight will be given to the submission of original documentation. 8 C.F.R. § 245a.2(d)(6). Page 9 contains a multiple-entry student visa issued in Lagos on January 29, 1982.³ Page 8 contains a departure stamp from Murtala

³ The student visa lists a period of stay authorized until January 29, 1983, to allow the applicant to attend Tuskegee Institute in Alabama. A Form I-20A also contains an Atlanta entry stamp, but lists a period of stay authorized until May 31, 1985. A Form I-20B notes that the applicant's student status was terminated in December 1982 because the applicant was no longer enrolled at Tuskegee Institute.

Muhammed Airport in Lagos dated February 13, 1982. Further, the page 9 contains an Atlanta entry stamp dated February 14, 1982. These documents are some evidence in support of the applicant's presence in the United States on February 14, 1982.

The applicant has submitted a copy of a statement of earnings from the Social Security Administration, showing earnings from 1982 through the requisite statutory period. The record also contains a copy of an air letter sent to the applicant in 1982 at [REDACTED] in Auburn, Alabama. Further, the applicant has submitted a copy of a letter sent to him in Alabama on November 15, 1982 by a Nigerian bank. These documents are some evidence in support of the applicant's presence in the United States from 1982 for the duration of the requisite statutory period.

The record contains copies of five receipts as follows: one dated May 6, 1984, two dated June 6, 1984, one each dated June 19, 1984, and October 6, 1984. These documents are some evidence in support of the applicant's presence in the United States from May 6, 1984 to October 6, 1984. The record also contains a copy of a pay stub from Montgomery Car Wash dated December 22, 1984. However, the applicant has not listed this company in the I-687 application as his employer at any time during the requisite period. Due to this inconsistency, this document is of minimal probative value.

The applicant has submitted a copy of a paycheck from [REDACTED] dated March 28, 1985. However, the applicant has not listed this company in the I-687 application as his employer at any time during the requisite period. Due to this inconsistency, this document is of minimal probative value.

The record contains a copy of the applicant's marriage certificate, which reveals that the applicant was married on February 4, 1986 in Alabama. This document is some evidence in support of the applicant's presence in the United States on February 4, 1986.

The applicant has submitted a copy of a receipt dated April 18, 1987. The applicant has also submitted a copy of a student identification card from Morgan State University for attendance from 1987 for the duration of the requisite statutory period. These documents are some evidence in support of the applicant's presence in the United States from April 18, 1987 for the duration of the requisite period.

The record contains copies of 14 undated photographs. The persons and locations in the photographs have not been identified by name. Copies of photographs do not establish the applicant's continuous residence throughout the requisite period.

The remaining evidence in the record is comprised of copies of the applicant's statements, the I-687 application, and two I-485 applications to adjust to permanent resident status: one on the basis of the applicant's being a diversity visa lottery winner, and one on the basis of an underlying I-130 spousal petition. The I-485 applications are accompanied by G-325A, biographic information sheets. The AAO finds in its *de novo* review that the record of proceedings contains materially inconsistent

statements from the applicant regarding his first entry into the United States and his absences from the United States during the requisite statutory period.

In the I-687 application the applicant states that he last entered the United States on December 26, 1980 and he does not list any absences from the United States. The witnesses [REDACTED] and [REDACTED] state that the applicant was absent from the United States from January 28, 1982 until February 12, 1982. Further, the record reveals two Forms G-325A, biographic information sheets, dated April 18, 1986 and December 13, 1994, respectively. The Form G325A requests applicants to list their last address outside the United States of more than one year. In the 1986 G-325A, the applicant stated that he resided in Lagos, Nigeria from March 1981 until February 1982. In the 1994 G-325A, the applicant stated that he resided in Lagos, Nigeria from April 1972 until February 1982. Further, page 6 of passport number [REDACTED] contains an entry stamp from Murtala Muhammed Airport in Lagos dated January 16, 1981. These contradictions are material to the applicant's claim in that they have a direct bearing on the applicant's residence in the United States for the duration of the requisite period. As stated above, 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. *Matter of Ho, supra*. The contradictions undermine the credibility of the applicant's claim of entry into the United States prior to January 1, 1982 and continuous residence in the United States during the requisite period.

The applicant has failed to provide probative and credible evidence of his continuous residence in the United States for the duration of the requisite period. The inconsistencies regarding the date of the applicant's first entry into the United States and his absences from the United States during the requisite statutory period are material to the applicant's claim in that they have a direct bearing on the applicant's residence in the United States during the requisite period. No evidence of record resolves these inconsistencies. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence pointing to where the truth lies. 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. *Matter of Ho*, 19 I & N Dec. 582, 591-592 (BIA). These contradictions undermine the credibility of the applicant's claim of entry into the United States prior to January 1, 1982 and continuous residence in the United States during the requisite period.

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. The various statements currently in the record which attempt to substantiate the applicant's residence and employment in the United States during the statutory period are not objective, independent evidence such that they might overcome the inconsistencies in the record regarding the applicant's claim that he maintained continuous residence in the United States throughout the statutory period, and thus are not probative.

In addition, the record also reveals that the applicant was deported from the United States at government expense on October 8, 1988. At an interview on June 9, 1995, the applicant admitted that he reentered the United States in January 1989 without inspection. The applicant is therefore

inadmissible to the United States based upon section 212(a)(9)(A)(ii) of the Immigration and Nationality Act (INA), as amended. An applicant who is otherwise approvable for temporary resident status but who was previously deported may be afforded the opportunity to file a waiver if the alien is determined to be inadmissible and the ground of inadmissibility is determined to be one which allows the filing of a waiver. Although the applicant's inadmissibility for having been deported may be waived, even if the applicant were to be granted a waiver he remains ineligible for failure to establish his continuous unlawful residence.

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.