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shall continue to be conducted without regard to such amendments) and
IIRIRA §309(c)(4)(E)(only appeal of discretionary decision under INA
§244 is limited, not purely statutory decisions).

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

- I. WHETHER THE BOARD OF IMMIGRATION APPEALS ERRED

SUMMARY OF THE ARGUMENT

Based on its decision in Matter of S-M-J, 21 I&N Dec. 722 (BIA 1997), the Board held that Petitioner had not demonstrated sufficient evidence to establish a claim of pas2 rrlcutitn. () Tj8036.5 0 TD -00953 Tc 0 TwSee(J) T

Because the BIA failed to properly apply Matter of S-M-J-, 21 I.&N. Dec. 722 (BIA 1997) to the facts of this case requiring.

During the Biafran war Chief Mbonu ordered and recruited many boys as young as the age of 12 to be forcefully conscripted into t

available. Id. However, in Matter of S-M

corroborative documents surrounding the death of the Petitioner's mother.

This is clear error.

First, and foremost, Petitioner was five years old at the time of his mother's death, the Biafran war was going on, and his family fled Nigeria due to his father's involvement in the active recruitment of young Igbo males for the Biafran war. Petitioner has stated that he has limited memories

Petitioner as a five-year-old boy was not personally harmed in Nigeria. However, this is not dispositive of the issue. See Sotelo-Aquije v. Slattery, 17 F.3d 33, 37 (2nd Cir. 1994) (“The essential element is that the threat [bombing of his house and death of his mother] be such that a reasonable person would find it credible, based on what that person has experienced and witnessed”).

Federal Circuit Court decisions have also called into question the wisdom of Matter of S-M-J-. In Hamezhi v. INS, 64 F.3d 1240, 1242, reh-g denied en banc (8th Cir. 1995), the Court stated, “an applicant’s uncorroborated testimony, if believed, may establish an objectively reasonable fear of persecution.” In Abankwahyoable fac1 Tc 0.59W95 90.75 0.75 re f BT7d

“An alien’s testimony, if unrefuted and credible, direct and specific, is sufficient to establish the facts testified without the need for corroboration. To the extent that decisions such as Matter of S-M-J- and Matter of M-D- establish a corroboration requirement for credible testimony, they are disproved.” Ladha v. INS, 215 F.3d 889, 900 (9th Cir. 2000).

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Mr. Mbonu clearly stated that he attempted to obtain his father's testimony, but failed due to the latter's inability to receive a visa, his failing health and age, his inability to contact him due to the loss of his phone, and faulty mailings. The above explanations evidences the fact that corroborating materials were not easily accessible to Mr. Mbonu to advance his asylum application.

Because the Immigration Judge found that Petitioner's testimony was credible, the BIA in congruence with the Diallo decision should have to explain specifically, either in its decision or otherwise in the record:

- (1) Why it is reasonable under the BIA's standards to expect such corroboration; and
- (2) Why Mr. Mbonu's proffered explanations for the lack of such corroboration are insufficient.

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Garrovillas, 156 F.3d at 1017 (citing Osorio T9sNSs

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Brief was served by 1st

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