



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

**Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**



44

FILE:   
MSC 05 327 11729

Office: CHICAGO

Date: DEC 17 2007

IN RE: Applicant: 

PETITION: 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. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

Robert P. Wiemann, 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, Chicago, Illinois. The decision is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded for further consideration and action.

The district director determined that the applicant admitted having been absent from the United States for more than 180 days in the aggregate. Therefore, the district director concluded that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements and denied the application.

On appeal, counsel asserts that the district director erred in denying the application because of the applicant's absence outside the United States during the period from November 1988 to January 1998. Counsel states that the applicant is only required to establish continuous residence in the United States in an unlawful status from prior to January 1, 1982, through the date the applicant was discouraged from filing a Form I-687 during the original legalization application period ending on May 4, 1988.

An applicant for temporary residence 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. See section 245A(a)(2) of the Immigration and Nationality Act (Act), 8 U.S.C. § 1255a(a)(2) and 8 C.F.R. § 245a.2(b).

“Continuous unlawful residence” is defined at 8 C.F.R. § 245a.2(h)(1), as follows:

An applicant for temporary resident status shall be regarded as having resided continuously in the United States if no single absence from the United States if, at the time of filing of the application: no absence has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982 through the date the application for temporary resident status was filed, unless the alien can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed.

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.

A review of the record reveals that the district director denied the application because the applicant admitted having been absent from the United States in the period from November 1988 to January 22, 1998, more than the 45 days allowed for a single absence outside the United States. However, this absence has no relevance in considering the applicant's eligibility for temporary residence under the CSS/Newman Settlement Agreements because this absence did not occur in that period from January 1, 1982 through the date that he attempted to file the Form I-687 application with the Immigration and Naturalization Service or the Service (now Citizenship and Immigration Services or CIS) in the original legalization application period between May 5, 1987 to May 4, 1988.

Accordingly, the decision of the district director is withdrawn. The case will be remanded for the purpose of reviewing the evidence provided by the applicant to demonstrate his continuous unlawful residence in the United States through the requisite period, as described above. If the district director concludes that the applicant is ineligible for any reason or that the submitted evidence is not sufficient to establish the applicant's continuous residence in this country for the requisite period, such issues must be specifically set forth in a new decision. The new decision, if adverse, shall be certified to this office for review.

**ORDER:** This matter is remanded for further action and consideration pursuant to the above.