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U.S. Citizenship
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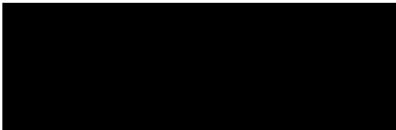


FILE: [Redacted] Office: NATIONAL BENEFITS CENTER Date: MAR 14 2007
MSC 06 077 13366

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. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case 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 Director, National Benefits Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed

The director determined that the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through the date that he attempted to file a Form I-687, Application for Status as a Temporary Resident, 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. 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, the applicant contends that his attorney failed to present his case properly and made an error in listing the dates of his absences from the United States on the Form I-687 application. The applicant noted that he did have any evidence relating to those times he entered this country without inspection.

An alien applying for adjustment to temporary resident status must establish that he or she entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through the date the application is filed. *See* section 245A(a)(2)(A) of the Immigration and Nationality Act (Act) and 8 C.F.R. § 245a.2(b).

An alien applying for adjustment to temporary resident status must establish that he or she has been continuously physically present in the United States since November 6, 1986. *See* section 245A(a)(3) of the Act and 8 C.F.R. § 245a.2(b)(1).

For purposes of establishing residence and presence in accordance with the regulation at 8 C.F.R. § 245a.2(b), "until the date of filing" shall mean until the date the alien attempted to file a completed Form I-687 application and fee or was caused not to timely file, consistent with the class member definitions set forth in the CSS/Newman Settlement Agreements. *See* Paragraph 11, page 6 of the CSS Settlement Agreement and paragraph 11, page 10 of the Newman Settlement Agreement.

An alien applying for adjustment of status 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

application with the Service in the original legalization application period from May 5, 1987 to May 4, 1988.

On January 31, 2006, the director issued a notice of intent to deny to the applicant informing him of CIS's intent to deny his application because he failed to submit any evidence of continuous unlawful residence in the United States from January 1, 1982 through May 4, 1988. The applicant was granted thirty days to respond to the notice.

In response, the applicant submitted a personal statement in which he reaffirmed his claim of continuous residence in the United States since prior to January 1, 1982. The applicant asserted that he could not obtain any documentation to support his claim of residence in this country for the requisite period because of his status as an undocumented alien and the passage of such a significant period of time.

The director determined that the applicant failed to submit any evidence demonstrating his residence in the United States in an unlawful status from prior to January 1, 1982 and, therefore, denied the Form I-687 application on June 19, 2006.

On appeal, the applicant contends that his attorney failed to present his case properly and made an error in listing the dates of his absences from the United States on the Form I-687 application. However, any appeal or motion based upon a claim of ineffective assistance of counsel requires: (1) that the claim be supported by an affidavit of the allegedly aggrieved respondent setting forth in detail the agreement that was entered into with counsel with respect to the actions to be taken and what representations counsel did or did not make to the respondent in this regard, (2) that counsel whose integrity or competence is being impugned be informed of the allegations leveled against him and be given an opportunity to respond, and (3) that the appeal or motion reflect whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of counsel's ethical or legal responsibilities, and if not, why not. *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), aff'd, 857 F.2d 10 (1st Cir. 1988). The record contains no evidence demonstrating the applicant has submitted a supporting affidavit detailing his allegations of ineffective counsel, informed counsel of his allegations regarding the claim of ineffective representation, allowed counsel the opportunity to respond to such allegations, and filed a complaint with appropriate disciplinary authorities with respect to any violation of counsel's ethical or legal responsibilities. Without such evidence, the applicant's implication that counsel failed to provide effective cannot be considered as persuasive.

The absence of any supporting documentation that provides testimony to corroborate the applicant's claim of continuous residence for the requisite period seriously detracts from the credibility of this claim. Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. The applicant has failed to submit any documentation to meet his burden of proof in establishing that he has resided in the United States since prior to January 1,

1982 by a preponderance of the evidence as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M-*, 20 I&N Dec. at 77.

Given the applicant's failure to provide any independent evidence to corroborate his claim of residence value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 as required under section 245A(a)(2) of the Act. 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.