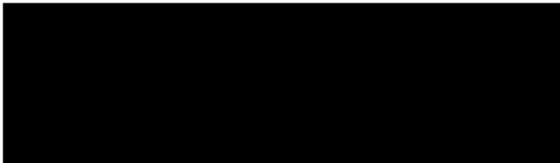




U.S. Citizenship
and Immigration
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prevent clearly unwarranted
invasion of personal privacy



L1

FILE: [Redacted]
MSC 05 161 10688

Office: Chicago

Date: MAR 16 2007

IN RE: Applicant: [Redacted]

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:

SELF-REPRESENTED

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, and is now before the Administrative Appeals Office (AAO) on appeal. This matter will be remanded for further action and consideration.

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, the applicant attempts to explain the length and purpose of his absences from this country in the period from 1991 to 1997. The applicant submits documentation in support of his appeal.

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 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 for Status as a Temporary Resident, 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.

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 1991 to 1997 for more than 180 days in the aggregate. However, these absences have no relevance in considering the applicant’s eligibility for temporary residence under the CSS/Newman Settlement Agreements because such absences 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.

In addition, the record shows that the applicant filed the Form I-687 application with receipt number MSC 05 161 10688 on March 11, 2005. However, the Form I-687 application is not in the current record of proceedings but is contained in a separate T-file, T93 056 732, located at the National Records Center. The district director must therefore request this T-file and incorporate the contents of that file into the current record of proceedings prior to the continuation of the adjudication of the Form I-687 application.

It must be noted the record contains the results of the applicant's Federal Bureau of Investigation fingerprint check, which reveal that the applicant was arrested by the Chicago, Illinois Police Department Sheriff's Office and charged with domestic battery on February 20, 2001. The applicant subsequently submitted court documents reflecting that this domestic battery charge was brought against the applicant in case [REDACTED] before the Circuit Court of Cook County, Illinois. However, these court documents do not demonstrate the final disposition of this criminal charge against the applicant.

It must be further noted that the residential lease provided by the applicant in support of his claim of residence in this country for the requisite period contains only the signature of the landlord and does not contain the corresponding signature of the applicant as the tenant.

Accordingly, the decision of the district director is withdrawn. The case will be remanded for the purpose of reviewing the applicant's criminal history and the evidence provided by the applicant to demonstrate his continuous unlawful residence in the United States from prior to January 1, 1982 through May 4, 1988. 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.