



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED]
MSC 05 231 15154

Office: HARTFORD

Date: MAR 21 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:

[REDACTED]

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, Boston, Massachusetts, and 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 for the applicant stated that the applicant “insists that he was in the country at the required times and promises to submit evidence to our office.” Counsel indicated that a brief and/or additional evidence would be submitted within 30 days. To date, Citizenship and Immigration Services (CIS) has not received a brief or any additional evidence from counsel or from the applicant.

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 1998 to 2000, a period of more than 180 days in the aggregate. However, this absence has no relevance in considering the

applicant's eligibility for temporary residence under the CSS/Newman Settlement Agreements because the absence did not occur in the period from January 1, 1982 through the date that the applicant attempted to file his Form I-687 application with the Immigration and Naturalization Service (the Service), now Citizenship and Immigration Services (CIS), or 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 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.

It is noted that the applicant stated at his legalization interview that he first entered the United States without inspection on September 29, 1981, and resided continuously in the United States from that date to the date he attempted to file his Form I-687 in the original legalization period from May 5, 1987 to May 4, 1988. In support of his application, the applicant submitted only two affidavits to corroborate his claim of continuous residence during the requisite period. Both affidavits lack sufficient specificity to corroborate the applicant's claim.

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