

Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal

U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

L1

FILE:

MSC-06-101-21899

Office: MILWAUKEE

Date: OCT 02 2008

IN RE:

Applicant:

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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

  
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 of the Milwaukee office. The decision is now before the Administrative Appeals Office (AAO) on appeal. This matter will be remanded for further action and consideration.

The director found that the applicant had failed to establish entry into the United States before January 1, 1982 and continuous residence in the United States in an unlawful status throughout the requisite period. It is noted that the director erroneously identified the end of the requisite period as May 4, 1988 rather than as the date that the applicant first attempted to file for temporary resident status.

It is noted that the applicant indicated on her Form I-687 application that she took a trip to India from November 1982 to February 1983 to have a baby. According to 8 C.F.R. § 245a.2(h)(1)(i), an applicant for temporary resident status shall be regarded as having resided continuously in the United States if, at the time of filing of the application, no single absence from the United States has exceeded 45 days, and the aggregate of all absences has not exceeded 180 days between January 1, 1982 through the date the application for temporary resident status is filed, unless the applicant can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed. The applicant's statements on her Form I-687 indicate she was absent from the United States throughout December 1982 and January 1983, a period exceeding 45 days. The applicant provided no explanation for the delay in her returning to the United States. Therefore, the applicant appears not to have resided continuously in the United States throughout the requisite period. The director failed to raise this issue in the decision.

On appeal, counsel for the applicant states that the immigration officer's failure to grant the applicant's request to reschedule the interview due to health reasons was unreasonable. She also states that the applicant wishes to refute the contents of a prior asylum filing during the interview.

Each applicant for temporary resident status shall be interviewed by an immigration officer, except that the interview may be waived for a child under 14, or when it is impractical because of the health or advanced age of the applicant. 8 C.F.R. § 245a.2(j).

A review of the record reveals that the applicant was never interviewed in relation to her application for temporary resident status, and none of the exceptions to the interview requirement apply in this case. The record also indicates that the applicant submitted a request to reschedule the interview prior to the interview, together with medical documentation of an injury that prevented her from appearing. Accordingly, the decision of the director is withdrawn. The case will be remanded for the applicant to be scheduled for an interview with an immigration officer.

After the interview is conducted and the complete record is reviewed, then the director shall issue a new decision to the applicant. If the director finds that the applicant is not eligible for temporary resident status, then the director shall forward the matter to the AAO for the adjudication of the applicant's appeal as it relates to the issue of whether the applicant has demonstrated eligibility for temporary resident status.

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