



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
MSC-05-278-10016

Office: MIAMI

Date: AUG 18 2008

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:

[REDACTED]

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann". Below the signature is a small, stylized mark or initial.

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, Miami. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because she found the evidence submitted with the application was insufficient to establish eligibility for Temporary Resident Status pursuant to the terms of the CSS/Newman settlement agreements. Specifically, the applicant stated on her I-687 application and in her interview with a Citizenship and Immigration Services (CIS) officer that she first entered the United States in July 1987. The applicant provided no evidence of residence in the United States prior to 1987.

On appeal, the applicant confirmed that she first entered the United States in 1987 via the Canadian border. **Her statements on appeal are consistent with her initial testimony.** She stated that she is eligible for the benefit sought because she “filed under her father as a subclass member under 245a.10.” Counsel for the applicant asserts that since the applicant “is the daughter of a CSS applicant whose relationship was established before the original CSS application period of May 5, 1987 to May 4, 1988 she is well within the requirements.”

This argument is without merit. Every applicant for legalization 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. Section 245A(a)(2) of the Act, 8 U.S.C. § 1255a(a)(2). The applicant must also establish that he or she has been continuously physically present in the United States since November 6, 1986. Section 245A(a)(3) of the Act, 8 U.S.C. § 1255a(a)(3). The regulations clarify that the applicant must have been physically present in the United States from November 6, 1986 until the date of filing the application. 8 C.F.R. § 245a.2(b)(1).

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.

The applicant 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 the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.2(d)(5).

Since the applicant, by her own repeated admissions, has failed to meet the burden of proof by a preponderance of the evidence that she entered the United States prior to January 1, 1982 and resided continuously in the United States for the requisite period, the appeal will be dismissed.

Therefore, it is concluded that the applicant has failed to establish continuous residency in an unlawful status in the United States for the requisite period. A review of the decision reveals the director accurately set forth a legitimate basis for denial of the application. The appeal must therefore be dismissed.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.