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**U.S. Citizenship  
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Services**

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FILE: [REDACTED]  
MSC 05 244 14923

Office: NEW YORK

Date: FEB 17 2009

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:

SELF-REPRESENTED

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.

John F. Grissom, Acting 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, New York, New York. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application based upon the reason stated in the Notice of Intent to Deny (NOID), dated March 7, 2006 because the applicant failed to submit additional evidence for consideration in making a decision in his case within the time allotted. In the NOID, the director stated, in part:

During your interview, you stated that you first lived with you sister in Stanton Island then moved to Brooklyn to live with your Aunt. You claim to have been in the United States since 1981; however, you failed to submit records, utility bills, medical records or additional evidence to support your claim. A review of the evidence submitted, fails to show proof that you were in fact in the United States on January 1, 1982. In addition, there is no proof that you resided continuously in the United States in an unlawful status, and that you have been physically present in the United States from November 6, 1998, until the date of filing [or attempting to file] the application. . . .

Given all of the information above, you have failed to submit credible documents which would constitute a preponderance of evidence as to your residence in the United States during the statutory period.

On appeal, the applicant submits a letter under the letterhead of [REDACTED], a law firm from [REDACTED] who asserts that [REDACTED] did not receive a NOID. However, the record does not contain a Form G-28, Notice of Entry of Appearance of Attorney or Representative, signed by the applicant authorizing [REDACTED] to represent him before United States Citizenship and Immigration Services (USCIS), in this proceeding. It is noted that the assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988). The applicant also submits:

1. A notarized statement from [REDACTED] dated September 12, 2006, indicating that the applicant had resided with her and her family back in 1982 when he entered into the United States and also on subsequent occasions following 1982.
2. A notarized statement from [REDACTED] dated September 19, 2006, indicating that the applicant, her brother, lived with her on different occasions from 1982 through 1986 at her residences during this period.

3. A notarized letter from \_\_\_\_\_ dated September 19, 2006 indicating he has known the applicant since 1985.

Section 245A(a)(2) of the Act (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).

The three notarized documents listed above neither singly or collectively establish that the applicant had been in unlawful status since before January 1, 1982 through the date when he attempted to first file for legalization during the original filing period from May 5, 1987 ending on May 4, 1988. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

On his Form I-687, Application for Status as a Temporary Resident Under Section 245A of the Immigration and Nationality Act, that he filed on June 1, 2005, the applicant stated that his only absence from the United States since entry was a visit to Trinidad and return in January 1987. However, the record reflects that he was issued a nonimmigrant visa for multiple entries into the United States at Port of Spain, Trinidad and Tobago, on December 11, 1984. It also shows that he embarked from that country on June 9, 1986 and that he was admitted to the United States in New York on the same day. When questioned about his travels to and from the United States March 3, 2006, the interviewing officer's notes indicate that he did not give precise answers but related that he had been back to his home country a number of times from 1982 to 2006.

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 period, is admissible to this country under the provisions of section 245A of the Act, and is otherwise eligible for adjustment of status. The inference drawn from the documentation provided depends on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.2(d)(5).

Upon a *de novo* review of all of the evidence in the record, the AAO agrees with the director that the evidence submitted by the applicant has not established that he is eligible for the benefit sought.

Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that he has continuously resided in an unlawful status in the United States for the requisite period as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M--*, *supra*. 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.