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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, D.C. 20529-2090



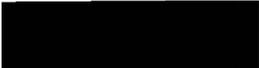
**U.S. Citizenship
and Immigration
Services**

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FILE:



Office: MIAMI

Date:

JAN 26 2010

MSC 05 131 12341

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: 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.

Perry Rhew
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, Miami, Florida, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant submitted a Form I-687, Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (Act), and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet. The director determined that the applicant had not established by a preponderance of the evidence that she had continuously resided in the United States in an unlawful status for the duration of the requisite period. The director denied the application, finding that the applicant had not met her burden of proof and was, therefore, not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, the applicant asserts that she has derivative status under the provisions of the Agreement because of her husband's eligibility. The applicant states that her spouse is a *LULAC/CSS* member who entered the United States prior to January 1, 1982, and has continuously resided in this country since that date.

An applicant for temporary resident status 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).

In a statement dated July 20, 2006, the applicant indicated that she had visited her husband in the United States many times throughout the requisite period, "but permanently came in the United States on 11/2/1995." The applicant indicated on her Form I-687 application to have been issued a B-2 visa on April 18, 1995, and claimed residence in the United States from January 1995.

Because the applicant did not reside in the United States during the requisite period, when her spouse may have attempted to apply for legalization during the May 5, 1987 through May 4, 1988 period, the applicant cannot derive status from her spouse under the CSS/Newman Settlement Agreements. The applicant incorrectly answered "yes" to questions two and three of the CSS/Newman Class Membership Worksheet.

Given the applicant's inability to meet the statutory requirement of residence in the United States since before January 1, 1982, the applicant is ineligible for temporary residence under section 245A(a)(2) of the Act.

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