

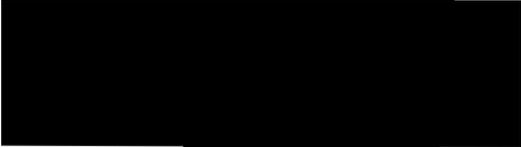
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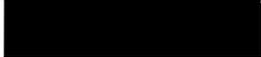
U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

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FILE:



MSC 05 194 14360

Office: NEW YORK

Date:

**OCT 15 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:

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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, New York. The decision 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's evidence was contradictory and that the applicant had not established by a preponderance of the evidence that he had continuously resided in the United States in an unlawful status for the duration of the requisite period. As noted by the director, the applicant stated that: he first entered the United States on August 4, 1981 and resided at [REDACTED], Brooklyn, NY from 1981 to 1983 with his sister; he then moved to [REDACTED] Brooklyn, NY from 1983 to 1985 with a friend; he then lived at on [REDACTED] Brooklyn, NY from 1985 to 1986 with his brother; and he then lived at [REDACTED] Brooklyn, NY with a girlfriend from 1986 "until present." The director noted that according to the Form I-687 filed on April 12, 2005: the applicant resided at [REDACTED], Brooklyn, NY from August of 1981 until September of 1989; in September of 1989 the applicant moved to [REDACTED], Brooklyn, NY where he presently resides. The applicant stated that he resided at two addresses at the same time, using his sister's address as his primary location, and that he forgot to mention this to the interviewing officer. The director found that the affidavits submitted by the applicant lacked probative value and that the applicant failed to establish his unlawful residence in the United States prior to January 1, 1982 through May 4, 1988 under terms of the CSS/Newman Settlement Agreements.

The AAO, however, shall withdraw the decision of the director and the application shall be denied on another ground. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

Section 245A(g)(2)(B)(i) of the Act provides that "an alien shall not be considered to have resided continuously in the United States, if, during any period for which continuous residence is required, the alien was outside the United States as a result of a departure under an order of deportation . . . ."

The applicant was ordered deported on April 24, 1985 by United States Immigration Judge [REDACTED]. The record reflects that the applicant was deported, and his departure was verified by a United States Immigration Officer on May 7, 1985. The applicant, therefore, was outside the United States pursuant to an order of deportation during the requisite period. The applicant has not continuously and unlawfully resided in the United States for the duration of the requisite period and

he is ineligible for temporary resident status under section 245A of the Act on this basis. Additional evidence of record pertaining to the applicant's residence in the United States during the requisite period shall not be further considered.

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