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20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

LI

FILE: [REDACTED] Office: New York
MSC 05 196 10513

Date: **JAN 05 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:

[REDACTED]

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 "John F. Grissom".

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 because she found that 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.

On appeal, the applicant states the interviewing USCIS Officer failed to give appropriate weight to the evidence that he submitted and erred in finding that he had not met his burden of proof. The applicant also states that he has submitted "new evidence" with his appeal. However, this "new evidence" consists of a letter from Regional Scaffolding & Hoisting Co., Inc. in Bronx, New York, dated February 13, 2006, which states that during the years from 1983 through 1995, the applicant unsuccessfully applied for a job numerous times and that he was hired in 1995. This letter is not probative of the applicant's residence in the United States during the requisite period.

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). 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).

On February 22, 1996, the applicant was interviewed under oath by an Asylum Officer concerning his Form I-589, Request for Asylum in the United States, which he filed on December 27, 1994. At his interview, the applicant revealed that after his friend died in 1994 and because of other economic and family circumstances, he decided to move to the United States. The record reflects he first entered this country on September 24, 1994, as a "B-1" nonimmigrant visitor for business. The evidence of record does not establish that the applicant had continuously resided in the United States since before January 1, 1982 or that he has been continuously physically present in the United States from November 6, 1986 until the date he filed his Form I-687, Application for Status as a Temporary Resident Under Section 245A of the Immigration and Nationality Act, on April 14, 2005. Consequently, the director's decision is affirmed for these reasons.

The applicant has submitted evidence to establish that he was in the United States prior to September 24, 1994. However, pursuant to 8 C.F.R. § 245a.2(d)(6), the sufficiency of all evidence produced by the applicant will be judged according to its probative value and

credibility. Based on the applicant's sworn statement, his documentation is without any probative value and lacks credibility. He has not furnished sufficient evidence to meet his burden of proof in this proceeding.

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