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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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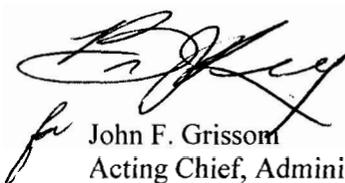
IN RE: Applicant: [REDACTED]

PETITION: 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. 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.


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, Nebraska Service Center, 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 he 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 his 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, counsel asserts that in her correspondence dated May 15, 2007, evidence was submitted in the form of checks and academic records evidencing the applicant's presence.

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).

For purposes of establishing residence and presence in accordance with the regulation at 8 C.F.R. § 245a.2(b), "until the date of filing" shall mean until the date the alien attempted to file a completed Form I-687 application and fee or was caused not to timely file, consistent with the class member definitions set forth in the CSS/Newman Settlement Agreements. Paragraph 11, page 6 of the CSS Settlement Agreement and paragraph 11, page 10 of the Newman Settlement Agreement.

An alien applying for adjustment of status 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. *See* 8 C.F.R. § 245a.2(d)(5).

Section 245A(2) of the Act states:

(B) Nonimmigrants – In the case of an alien who entered the United States as a nonimmigrant before January 1, 1982, the alien must establish that the alien's period of authorized stay as a nonimmigrant expired before such date through the passage of time or the alien's unlawful status was known to the Government as of such date.

(C) Exchange Visitors – If the alien was at any time a nonimmigrant exchange alien (as defined in section 101(a)(15)(J)), the alien must establish that the alien was not subject to the two-year foreign residence requirement of section 212(e) of such Act or has fulfilled that requirement or received a waiver thereof.

The regulation at 8 C.F.R. § 245a.2(b)(4) defines nonimmigrant exchange visitor, as an eligible alien who was at any time a nonimmigrant exchange alien (as defined in section 101(a)(15)(J) of the Act), who entered the United States before January 1, 1982, must establish that he or she:

- (A) Was not subject to the 2-year foreign residence requirement of section 212(e) of the Act; or
- (B) Has fulfilled the 2-year foreign residence requirement of section 212(e) of the Act; or
- (C) Has received a waiver for the 2-year foreign residence requirement of section 212(e) of the Act.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

At issue in this proceeding is whether the applicant has submitted sufficient credible evidence to meet his burden of establishing continuous unlawful residence in the United States during the requisite period. In the instant case, the applicant has failed to meet this burden.

The record contains a Form IAP-66, Certificate of Eligibility for Exchange Visitor, for the period January 2, 1982 to January 2, 1983 signed by the applicant on December 10, 1981, in Accra, Ghana. The form contains an admission stamp indicating that the applicant was admitted into the United States as a J-1 nonimmigrant on January 17, 1982, and his authorized period of admission was valid through January 2, 1983.

The record also contains a second Form IAP-66 signed by the applicant on August 31, 1983. At Part 1, item 1, the applicant indicated that the purpose of the form was to *extend* an on going program at The University of Hartford (Connecticut). The form was extended through December 31, 1983.

The applicant claimed no residence in 1981 or any absences during the requisite period on his Form I-687 application.

At the time the applicant filed his Form I-687 application, he presented no evidence to establish continuous unlawful residence and physical presence in the United States during the requisite period. In response to a Notice of Intent to Deny issued on March 23, 2007, counsel requested an extension of time in order to gather the necessary documents.

The director, in denying the application, noted that as of the date of his decision, no documentation had been submitted to support the applicant's claim of residence during the requisite period. The director determined that the applicant had failed to submit sufficient credible evidence establishing his continuous residence in the United States during the period in question.

In an attempt to establish the applicant's continuous residence in the United States during the requisite period, counsel, on appeal, submits a photocopy of a degree from The University of Hartford issued on January 21, 1984, along with three photocopied checks dated June 5 and 6, 1986, and December 1, 1987. The remaining documents submitted have no probative value as they serve to establish the applicant's residence subsequent to the period in question.

The documentation contained within the record establishes that the applicant was not residing in the United States prior to January 1, 1982; he entered on January 17, 1982, as a J-1 nonimmigrant exchange visitor. The applicant maintained this lawful status through December 31, 1983. The applicant became subject to the foreign residence requirement because his stay in the United States was funded by the Agency for International Development. There is no indication that the foreign residence requirement was ever waived.

Accordingly, the applicant has failed to establish that he resided in a continuous unlawful status in the United States during the requisite period, as required under section 245A(a)(2) of the Act. 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.