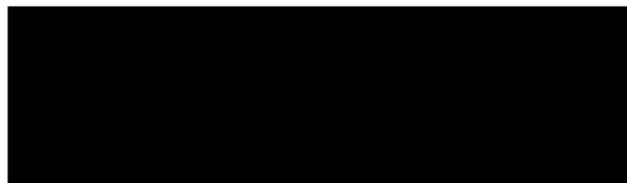


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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W. MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



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DATE: **JUL 30 2012**

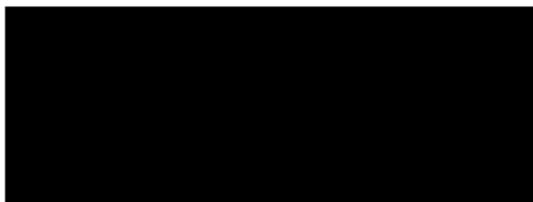
OFFICE: NATIONAL BENEFITS CENTER

FILE:

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:



**INSTRUCTIONS:**

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the National Benefits Center. 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.

Thank you.

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, or *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, National Benefits Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

On January 9, 2006, the applicant filed an application for status as a temporary resident (Form I-687). On August 16, 2006, the director of the New York Office erroneously denied the Form I-687 application, finding that the applicant abandoned the application, pursuant to 8 C.F.R. § 103.2(b)(13), by failing to appear for a May 1, 2006 scheduled interview.<sup>1</sup> Because the director erred in denying the application based on abandonment, on October 4, 2010, the director of the National Benefits Center issued a notice advising the applicant of the right to appeal the decision to the Administrative Appeals Office (AAO).

It is noted that counsel stated on the Notice of Appeal to the Administrative Appeals Office (AAO), Form I-694, that an appeal brief or supplementary statement will be submitted within 30 days after receipt of a copy of the record of proceedings (ROP). The record reflects that counsel submitted a FOIA request which was processed on March 26, 2012. However, the record does not reflect receipt of a brief or additional evidence.

On appeal, counsel asserts that the applicant did not abandon your application as the applicant had a medical reason for not attending the interview.

On June 13, 2012, the AAO notified the applicant of the intent to deny the application based on deficiencies in the record. The applicant was granted 21 days to respond. However, the record does not reflect receipt of a response to the notice.

The AAO will consider the claim *de novo*, evaluating the sufficiency of the evidence in the record, according to its probative value and credibility as required by the regulation at 8 C.F.R. § 245a.2(d)(6).<sup>2</sup>

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).

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<sup>1</sup> On December 14, 2009, the United States District Court for the Eastern District of California ruled that United States Citizenship and Immigration Services (USCIS) may not apply its abandonment regulation, 8 C.F.R. § 103.2(b)(13), in adjudicating legalization applications filed by CSS class members. *See, CSS v. Michael Chertoff*, Case 2:86-cv-01343-LKK-JFM.

<sup>2</sup> The AAO conducts appellate review on a *de novo* basis. The AAO's *de novo* authority is well recognized by the federal courts. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

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).

For purposes of establishing residence and physical presence under the CSS/Newman Settlement Agreements, the term "until the date of filing" in 8 C.F.R. § 245a.2(b) means until the date the applicant attempted to file a completed Form I-687 application and fee or was caused not to timely file during the original legalization application period of May 5, 1987 to May 4, 1988. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

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 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. 8 C.F.R. § 245a.2(d)(5).

Even if the director has some doubt as to the truth, if the applicant submits relevant, probative, and credible evidence that leads the director to believe that the claim is "probably true" or "more likely than not," the applicant or petitioner has satisfied the standard of proof. See *U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (1987) (defining "more likely than not" as a greater than 50 percent probability of something occurring). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. *Matter of Ho*, 19 I & N Dec. 582, 591-592 (BIA).

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate that he continuously resided in the United States in an unlawful status from before January 1, 1982 through the date he attempted to file a Form I-687 during the original one-year application period that ended on May 4, 1988. After reviewing the entire record, the AAO determines that he has not met his burden.

At the time of completing his Form I-687 application, dated December 30, 2005, the applicant indicated that he had resided in the United States since January 1981, and that he had departed the United States for Saudi Arabia, to visit family, in September 1987 and that he returned to the United States in November 1987. However, the applicant does indicate the duration of this absence and the record does not establish the date of departure to Saudi Arabia in September 1987 and the date and the manner of his entry when he returned to the United States in November 1987. Without evidence of the date that the applicant departed to Saudi Arabia in September 1987 and the date he returned to the United States in November 1987 we cannot determine whether that absence exceeded 45 days from the United States that disrupted any continuous residence he may have established, and the record does not include any evidence to explain any such prolonged absence.

The applicant also indicated on his Form I-687 that he had a second departure from the United States for Saudi Arabia, to visit family, in January 1988 and that he returned to the United States in April 1988. This absence exceeds 45 days.

An absence that exceeds the 45 days allowed for a single absence disrupts the applicant's continuous residence unless the applicant can establish that the applicant had an emergent reason for a prolonged absence. The record, however, lacks evidence to establish that this prolonged absence was due to an emergent reason. It must be concluded, therefore, that this prolonged absence disrupts any continuous residence the applicant may establish.

In addition, in an attempt to establish his claim, the applicant provided affidavits from [REDACTED] [REDACTED] attests to having known the applicant to have resided in the United States since 1981. [REDACTED] also attests to your friendship since he met the applicant at a marriage party. [REDACTED] whose affidavit is dated December 29, 2005, attests to having known the applicant for 20 years and to their friendship. The affidavits, however, lack detail and do not establish the applicant's continuous residence. For example, besides attesting to having known the applicant to have resided in the United States during the requisite period, the affiants do not give additional information relevant to the requisite period. The affiants do not indicate how they date their acquaintance with the applicant in the United States, and how and to what extent they maintained contact with the applicant throughout the requisite period. The witnesses do not indicate details of any specific activities with the applicant and do not date any of activity, and how frequently they had contact with the applicant during the requisite period. As such, these statements are not probative of the applicant's continuous residence and are of little evidentiary value.

The record also includes a job verification letter, dated December 29, 2005, from [REDACTED] [REDACTED] stating that the applicant had been employed as a cashier at his store located at [REDACTED] from 1981 to October 2000. [REDACTED] also attests to the applicant's work habits and honesty.

However, [REDACTED] does not provide details, such as the dates when the employment commenced and ended. It is also noted, that the letter fails to provide the applicant's address at the time of his employment, show periods of layoff, declare whether the information was taken from company records, and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable as required under 8 C.F.R. § 245a.2(d)(3)(i). The letter, is therefore, not probative as evidence of your employment as it does not conform to the regulatory requirements.

Aside from the affidavit and letter of employment from [REDACTED], and the affidavit from [REDACTED] the record is devoid of supporting documentation to establish the applicant's continuous residence. The remaining documentation in the record does not pertain to the requisite period and does not establish the applicant's continuous residence.

The documentation of record, individually and cumulatively, does not establish the applicant's continuous residence in the United States in an unlawful status during the requisite period.

As stated previously, the evidence must be evaluated not by the quantity of evidence alone but by its quality. Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the applicant's reliance upon documents with minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982, through May 4, 1988.

Based on the foregoing analysis of the evidence, the AAO concludes that the applicant has failed to establish his continuous unlawful residence in the United States throughout the requisite period. Thus, the record does not establish that the applicant entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from that date through the date he attempted to file a Form I-687 during the original one-year application period that ended on May 4, 1988. Accordingly, the applicant is ineligible for temporary resident status under section 245A(a)(2) the Act.

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