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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 August 24, 2005, the applicant filed an application for status as a temporary resident (Form I-687). On February 13, 2007, the director of the Garden City Office, Queens, New York, 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 March 6, 2006 and October 4, 2006 scheduled interviews.<sup>1</sup> Because the director erred in denying the application based on abandonment, on September 29, 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). The decision is now before the AAO on appeal. The director's decision will therefore be withdrawn, and the AAO will consider the claim *de novo*, evaluating the sufficiency of the evidence in the record, according to its probative value and credibility as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>

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 11, 2012.<sup>3</sup> However, the record does not reflect receipt of a brief or additional evidence.

On appeal, counsel asserts that the applicant did not abandon the application as he was ill and under medical care, and could not attend the interview.

On June 11, 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.

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).

<sup>3</sup> NRC2011076145.

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 the Form I-687 application, dated August 16, 2005, the applicant indicated that he had resided in the United States since 1981. In an attempt to establish his claim, the applicant has provided affidavits from [REDACTED] and [REDACTED], attesting to having known the applicant to have resided in the United States since July 1981. [REDACTED] also attests that he and the applicant were childhood friends; that when the applicant first arrived in New York he picked him up at the Port Authority; took the applicant to his home where the applicant stayed for about a week; then, he took the applicant to the applicant's brother's home at [REDACTED] [REDACTED] also attests that the applicant is his brother and that when the applicant first arrived in New York, [REDACTED] picked him up at the Port Authority and that the applicant stayed with [REDACTED] for about a week, and then with him at his home. [REDACTED] also attests that the applicant is a "cousin brother" of his good friend, and that the applicant has good relations and keeps in touch with his family.

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 the activities, 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.

Also, the record indicates that the applicant has submitted questionable documentation in an attempt to establish his continuous residence. Specifically, it is noted that [REDACTED] and [REDACTED] attest that the applicant resided at [REDACTED] from July 1981 to August 1992; and [REDACTED] attests that the applicant resided at [REDACTED] from July 1981. However, on his Form I-687 application, the applicant indicated that he resided at [REDACTED] Ridgewood, New York 11385, from 1981 to 1988, and the applicant does not indicate ever having resided in [REDACTED]. In addition, the applicant indicated on his Biographic Information, Form(s) G-325A, submitted in connection with Petition(s) for Alien Relative (Form(s) I-130) that he had resided in Punjab, India, from birth until August 1991.

These discrepancies cast considerable doubt on the applicant's claim that he resided continuously in the United States since prior to January 1, 1982. Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The record lacks any objective evidence to explain or justify the discrepancies in the record. Therefore, the reliability of the remaining evidence offered is suspect and it must be concluded that the applicant has failed to establish that he continuously resided in the United States in an unlawful status during the requisite period.

Aside from the affidavits 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.