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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**

[REDACTED]

L1

DATE: **SEP 25 2012** OFFICE: MIAMI FILE: [REDACTED]

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. 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 Rhee  
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 Miami District Director, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

On September 3, 2004, the applicant filed an application for status as a temporary resident (Form I-687). On April 18, 2006, the director of the Miami District Office erroneously denied the I-687 application, finding that the applicant had abandoned the application, pursuant to 8 C.F.R. § 103.2(b)(13), by failing to respond to a notice of intent to deny (NOID) the application.<sup>1</sup> Because the director erred in denying the application based on abandonment, on October 7, 2010, the director of the National Benefits Center issued a notice advising you of the right to appeal the decision to the Administrative Appeals Office (AAO).

On appeal, counsel asserts that the evidence provided establishes that you have continuously resided in the United States in an unlawful status for the duration of the requisite statutory period.

The record indicates that a FOIA requests was processed on January 25, 2012.<sup>2</sup>

On May 24, 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.<sup>3</sup>

The AAO has reviewed all of the evidence, and has made a *de novo* decision based on the record and the AAO's assessment of the credibility, relevance and probative value of the evidence.<sup>4</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> NRC2011055231.

<sup>3</sup> Counsel's June 15, 2012 request for an additional sixty (60) days to submit additional evidence was denied on June 22, 2012.

<sup>4</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 her Form I-687 application, dated January 1, 1991, the applicant indicated that she had resided in the United States since May 1981; that she had departed the United States for Trinidad, to visit family and get married, in March 1983 and that she returned to the United States in April 1983; and to visit family in Trinidad and to have a baby in January 1984, and that she returned to the United States in February 1984.

In addition, in an attempt to establish her claim, the applicant has provided witness statements attesting to her residence in the United States during the requisite period.

The record includes the following:

1. Two letters from [REDACTED] In his letters, he indicated that he met the applicant in the summer of 1985 or 1986 and that he has known the applicant to reside in Florida since 1984.
2. A letter from [REDACTED] stating that she has known the applicant since 1984 and that they worshiped together at the [REDACTED]
3. A letter from [REDACTED] stating that she has known the applicant to reside in Florida since 1984.
4. A letter from [REDACTED] stating that she has known the applicant to reside in Florida since 1981.
5. A letter from [REDACTED] dated in 2002, stating that she has known the applicant to have resided in Florida for over 14 years.
6. A letter from [REDACTED] stating that he has known the applicant to have resided in Florida since 1981.
7. A letter from [REDACTED] dated 2002, stating that he has known the applicant to have resided in Florida for 16 years.
8. A letter from [REDACTED] stating that she has known the applicant since 1986 and that their families have been close and share holidays at one another's home.
9. A letter from [REDACTED] stating that she has known the applicant to reside in Florida since 1984.

These affidavits, however, lack detail and do not establish the applicant's continuous residence. For example, besides stating that they have known the applicant to have resided in the United States for part, or all of the requisite period, the affiants do not give sufficient additional information. The witnesses 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 since their acquaintance. Apart from [REDACTED] who states that she and the applicant share holidays, none of the witnesses provide specific details of their activities with the applicant and do not date any of their activities, and how frequently they had contact with her. As such, these statements are of little evidentiary value.

In addition, the record includes October 7, 2002 letters from [REDACTED] and from [REDACTED] both of [REDACTED] stating that they have known the applicant to have resided in Florida since 1984 and that she worshipped together with them at a [REDACTED]. The record also includes an October 11, 2002 letter from [REDACTED] of [REDACTED], stating that since 1985 the applicant has been an active member.

The regulation at 8 C.F.R. § 245a.2(d)(3)(v) provides requirements for attestations made on behalf of an applicant by churches, unions, or other organizations. Attestations must: (1) Identify applicant by name; (2) be signed by an official (whose title is shown); (3) show inclusive dates of membership; (4) state the address where applicant resided during membership period; (5) include the seal of the organization impressed on the letter or the letterhead of the organization, if the organization has letterhead stationery; (6) establish how the author knows the applicant; and (7) establish the origin of the information being attested to.

The letters from [REDACTED] and [REDACTED] and from [REDACTED] do not comply with the above cited regulations because they do not: state the address where the applicant resided during the membership period; establish in detail that the author knows the applicant and has personal knowledge of the applicant's whereabouts during the requisite period; establish the origin of the information being attested to; and, that membership records were referenced or otherwise specifically state the origin of the information being attested to. It is also noted that [REDACTED] and [REDACTED] do not state the location of the [REDACTED] where the applicant worshipped with them. For these reasons, these letters are of little evidentiary value.

The documentation of record, individually and cumulatively, does not establish your 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 she 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 her 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 she 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.