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U.S. Citizenship
and Immigration
Services

LL

FILE:

MSC 05 189 10078

Office: ORLANDO

Date:

MAY 03 2007

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:

SELF-REPRESENTED

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 your case 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, 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. [REDACTED] (E.D. Cal) January 23, 2004, and *Felicity Mary Newman, et al., v. United States Immigration and Citizenship Services, et al.*, CIV. NO. [REDACTED] (C.D. Cal) February 17, 2004, (CSS/Newman Settlement Agreements) was denied by the District Director, Miami, Florida, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director determined that the applicant admitted having been absent from the United States for more than 45 days in one trip and more than 180 days in the aggregate. Therefore, the district director concluded that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements and denied the application.

An alien shall be regarded as having resided continuously in the United States if at the time of filing an application for temporary resident status, no single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, through the date the application is filed, unless the alien can establish that due to emergent reasons the return to the United States could not be accomplished within the time period allowed, the alien was maintaining residence in the United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.1(c).

If the applicant's absence exceeded the 45-day period allowed for a single absence, it must be determined if the untimely return of the applicant to the United States was due to an "emergent reason." Although this term is not defined in the regulations, *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988), holds that emergent means "coming unexpectedly into being."

On her Form I-687, Application for Status as a Temporary Resident, the applicant claimed that she established a residence in the United States in 1979, and that she resided continuously in the United States since that time. In block 32, where absences from the United States were to be listed, the applicant indicated that she was in Pakistan from March 1983 to March 1987 to visit relatives and that she was subsequently in Pakistan from March 1991 to June 1995 to get married. In block 16 of the application, where applicants are requested to list their last entry into the United States, the applicant indicated that she had last entered the United States as a nonimmigrant visitor on June 17, 1995.

On November 28, 2005, the applicant appeared at the Orlando, Florida, CIS Office for her legalization interview. During her legalization interview, the applicant told the interviewing officer that her initial absence outside the United States was from October 1985 to June 1986, not from March 1983 to March 1987 as indicated on her application. The applicant further stated that she was also in Pakistan from January 1988 to December 1988 for "employment." She stated that she left the United States to live in Pakistan from January 1989 to 1994, and returned to the United States to resume her residence in this country in June 1995. At the conclusion of her interview, the

applicant was issued a form I-72 requesting that she provide a notarized affidavit detailing the date of her initial entry into the United States and the inclusive dates of all absences outside the United States.

The applicant, in response, submitted photocopies of pages from her Pakistani passport Number [REDACTED] bearing an admission stamp indicating that the applicant was initially admitted to the United States at Miami, Florida, on October 4, 1979. She also submitted a notarized affidavit dated December 14, 2005, reflecting the following absences:

Original Entry: 1979	Departed: October 1985
Entry: July 1986	Departed: February 1988
Entry: December 1988	Departed: December 1988
Entry: December 1994	Departed: January 1995
Entry: June 1995	

On January 6, 2006, the district director sent a notice to the applicant noting that she had been out of the United States for more than 45 days in one trip and more than 180 days in the aggregate and affording her thirty (30) days to submit evidence to overcome the stated grounds for denial of her application. In response, the applicant submitted a personal statement dated February 2, 2006, listing her original entry into the United States and the inclusive dates of her absences outside the United States as follows:

Original Entry: 1979	Departed 10/85
Entry 1/1986	Departed 6/1986
Entry 07/1986	Departed 12/1987
Entry 01/1988	Departed 02/1988
Entry 05/1988	Departed 12/1988
Entry 12/1994	Departed 01/1995
Entry 06/1995	Present

The applicant submitted photocopies of passport pages from a Pakistani passport number [REDACTED] reflecting entries into the United States on January 4, 1986 and January 7, 1988.

The director denied the application on February 10, 2006, because the applicant was outside of the United States for more than 45 days on one trip and for more than 180 days in the aggregate.

On appeal, the applicant states that she mistakenly failed to include all the evidence regarding her absences in response to the request for additional evidence dated January 6, 2006. She further states that she is submitting the requested evidence again and requests that her application for temporary resident status be approved. She submits photocopies of the biographic pages of Pakistani passport number [REDACTED] issued in Pakistan on April 23, 1984.

The issue to be determined in this proceeding is whether the applicant was outside the United States for more than 45 days on a single trip or more than 180 days in the aggregate between January 1, 1982, and the May 4, 1988, the original deadline for filing applications for temporary resident status under section 245a of the Act. The applicant's absences outside the United States after May 4, 1988, are not relevant to this discussion and will not be addressed in this decision.

The applicant initially stated on her application that she was outside the United States from March 1983 to March 1987, a period of three years. She subsequently stated at her legalization interview that she was outside the United States from October 1985 through June 1986, a period of eight months, and from January 1988 through May 4, 1988, a period of four months. Both of these absences exceeded 45 days for a single trip and 180 days in the aggregate.

In response to the Form I-72, the applicant submitted an affidavit in which she stated that she was outside the United States from October 1985 to July 1986, a period of nine months, and from February 1988 through May 4, 1988, a period of three months. This statement contradicts her original statement on the Form I-687 that she was outside the United States from March 1983 to March 1987, a period of three years. The applicant did not list any absences outside the United States in 1988 on her application. The applicant has not offered any explanation for this contradiction in her dates of absence outside the United States or for her failure to list any absence outside the United States in 1988 on the application.

In response to the Notice of Intent to Deny dated January 6, 2006, the applicant stated that she was outside the United States from October 1985 to January 1986, a period of three months, from June 1986 to July 1986, a period of one month, from December 1987 through January 1988, a period of one month, and from February 1988 through May 1988, a period of three months. This statement contradicts her claimed dates of absence on the application, at the time of interview, and in response to the Form I-72. She has submitted photocopies of passport pages reflecting entries into the United States on January 4, 1986 and January 7, 1988. The applicant has not, however, submitted the pages from her Pakistani passport reflecting the dates of her entries into Pakistan or her departures from Pakistan during the period from January 1, 1982 through May 4, 1988.

These contradictions in the applicant's claimed dates of absence outside the United States raise serious questions regarding the credibility of her claim that she resided continuously in the United States during the period from January 1, 1982 through May 4, 1988. 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. Further, it is incumbent on the 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. (Comm. 1988).

An alien applying for adjustment of status has the burden of proving by a preponderance of evidence that he or she has *continuously* resided in an unlawful status in the United States from prior to January 1, 1982 through the date of filing, is admissible to the United States under the

provisions of section 245A of the Act, 8 U.S.C. § 1255a, and is otherwise eligible for adjustment of status. 8 C.F.R. § 245a.2(d)(5). In view of the multiple contradictions in the applicant's claimed dates of absence outside the United States, we find that the applicant has not credibly established continuous residence in the United States during the period from January 1, 1982 through May 4, 1988.

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