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U.S. Citizenship  
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[Redacted]

FILE: [Redacted] MSC 06-098-12803

Office: LOS ANGELES

Date: **AUG 29 2008**

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: SELF-REPRESENTED

**INSTRUCTIONS:**

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

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. 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 District Director, Los Angeles. The decision 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 she had continuously resided in the United States in an unlawful status for the duration of the requisite period. The director noted that the applicant had been absent from the United States for over forty-five (45) days. The director therefore determined that the applicant had not resided continuously in the United States, and was therefore not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, the applicant asserts that she was never absent from the United States for more than 45 days, and that therefore, her absences did not interrupt her continuous residence.

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).

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. See 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).

The applicant 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 considered filed, unless the applicant can establish that due to emergent reasons the return to the United States could not be accomplished within the time period allowed, the applicant was maintaining residence in the United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.2(h)(1).

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 , 810 (Comm. 1988), holds that emergent means "coming unexpectedly into being."

At issue in this proceeding is whether the applicant has submitted sufficient evidence to establish her continuous residence in the United States during the requisite period.

On her Form I-687, Application for Status as a Temporary Resident, the applicant indicated that she established a residence in the United States in April of 1981, and that she continuously resided in the United States since then. At part #32 where the applicant is instructed to list all absences from the United States, she did not indicate any absences. However, the applicant stated under oath during her immigration interview on November 8, 2006 that she has been absent from the United States from 1986 to December of 1989, when she returned to the country with a B-2 visa. Such an absence would comprise at least four months, from January through April 1987, during the requisite period.

In denying the application, the director noted that based upon the applicant's absence from the United States she had failed to meet her burden of proof by a preponderance of the evidence that she resided continuously in the country for the requisite periods.

On appeal, the applicant asserts that she entered the United States in April of 1981, and that she was only absent from the country for 30 days in 1986, 40 days in 1987, 33 days in 1988, and 42 days in 1989.

The applicant does not provide the exact dates of her absences and does not address her prior statements made under oath regarding her absence from 1986 to December of 1989. Moreover, the record of proceeding includes a Form I-687 and "Form for Determinations of Class Member in CSS v. Meese," submitted by the applicant in 1993 in which she claims to have had only two absences from the United States since her entry in 1981; one in May of 1986 and one from October of 1989 to November of 1990.

In the instant case, the applicant has failed to overcome the basis of the director's denial. While the applicant asserts on appeal that she left the United States on four separate occasions since her entry in 1981, she has failed to explain the inconsistencies and contradictions in her testimony regarding

her absences from the United States and has failed to address her admitted absence of over four months during the requisite period. Therefore, it cannot be concluded that she resided continuously in the United States for the requisite period.

The applicant has the burden of proving by a preponderance of evidence that she has *continuously* resided in an unlawful status in the United States from prior to January 1, 1982 through the requisite period, 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). Based upon the applicant's admitted absence of over 45 days and her failure to address the inconsistencies in the record regarding her absences, the AAO concludes that she did not continuously reside in the United States for the requisite period.

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