



U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

L1



FILE: [REDACTED]
MSC-05-011-10532

Office: NEW YORK

Date: **JUL 11 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. The file has 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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for temporary resident status was denied by the Director, New York District Office, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because she found the evidence submitted with the application was insufficient to establish eligibility for Temporary Resident Status pursuant to the terms of the CSS/Newman settlement agreements. Specifically, the applicant stated in his interview with a Citizenship and Immigration Services (CIS) officer that he first entered the United States in 1981 and resided continuously in unlawful status from 1981 until May 4, 1988. In support of these claims the applicant submitted two affidavits. Neither affidavit attests to the applicant's residency since prior to January 1, 1982. In fact, the first affiant indicated that he met the applicant in 1985, and the second applicant indicated that he met the applicant in 1983.

Additionally, the applicant indicated in his interview that he left the United States in December 1987 to return to Senegal and remained there until 2001. This absence represents a clear break in his continuous physical presence during the statutory period from November 6, 1986 through May 4, 1988.

On appeal, the applicant provided no additional evidence or explanation to overcome the reasons for denial of his application. As the director noted in her decision, 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 be 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.

Since the applicant, by his own repeated admission, has failed to meet the burden of proof by a preponderance of the evidence that he resided continuously in the United States for the requisite period, the appeal will be dismissed.

As stated in 8 C.F.R. § 103.3(a)(3)(iv), any appeal which is filed that fails to state the reason for appeal, or is patently frivolous, will be summarily dismissed.

A review of the decision reveals the director accurately set forth a legitimate basis for denial of the application. On appeal, the applicant has not presented additional evidence. Nor has he addressed the grounds stated for denial. The appeal must therefore be summarily dismissed.

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