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U.S. Citizenship
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Services

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FILE:

MSC 05-245-10992

Office: LOS ANGELES

Date: NOV 20 2008

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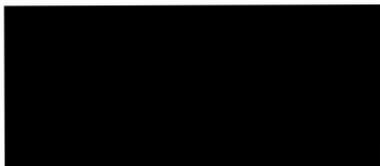
Applicant:



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. 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.

John F. Grissom, Acting 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 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, 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 he had continuously resided in the United States in an unlawful status for the duration of the requisite period. The director noted that based upon the applicant's own testimony, he had been absent during a single trip outside the United States for over forty-five (45) days. The director determined that the applicant had failed to meet the physical presence requirements and that he also failed to establish that he continuously resided in an unlawful status in the United States throughout the requisite period. The director further determined that the applicant was therefore not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, counsel asserts that the immigration officer failed to ask the applicant during his interview the reason for his absence and failure to return within 45 days of his departure. Counsel further asserts that the applicant was absent from the United States from December of 1986 to June of 1987 because he became sick and was unable to return to the United States because of his sickness. The applicant does not submit any evidence on appeal.

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 that his extended absence from the United States beyond 45 days, during a single trip, was due to emergent reasons.

During his interview with Citizenship and Immigration Services (CIS) officers on June 9, 2006, the applicant stated under penalty of perjury that he first entered the United States in January of 1981 and remained in the country until December of 1986 when he traveled to Canada to visit a friend. The applicant further stated that he returned to the United States in June of 1987.

In the instant case, the applicant has failed to overcome the basis of the director's denial. The applicant's claim of an emergent reason for his delayed return has not been substantiated. While counsel asserts on appeal that the applicant was absent from the United States for a prolonged period of time because he became sick, he has not submitted any evidence to substantiate this claim. While the applicant indicates in a statement that he became ill while in Canada, the applicant has failed to submit any records or documentation to demonstrate when he became ill, the type of illness he suffered from, the doctor who treated him for his illness, the severity of his illness, or the medical facilities where he was treated. The applicant has also failed to submit official hospital or medical records in relation to his claimed sickness. To meet his burden of proof, the applicant must submit evidence of eligibility apart from his own testimony. 8 C.F.R. § 245a.2(d)(6).

In light of the applicant's admission under oath that he was absent from the United States from December of 1986 to June of 1987, a period of more than 45 days, and based upon his failure to provide evidence that his return was delayed due to emergent reasons; any continuous unlawful

residence he may have had in the United States during the requisite period has been broken. 8 C.F.R. 245a.2(h)(1)(i). Due to his absence, the applicant has failed to demonstrate continuous unlawful residence in the United States for the requisite period. The applicant is therefore ineligible for temporary resident status under section 245A of the Act on that basis.

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