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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED]
MSC-06-096-16483

Office: NEWARK

Date: SEP 25 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:

[REDACTED]

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 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, Newark. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because he 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, in a sworn statement before an Officer of Immigration and Customs Enforcement (ICE) the applicant stated that he did not enter the United States until May 5, 1996. Similarly, on his Form I-687, the applicant indicated that he last entered the United States in July 1996. He listed no address in the United States prior to July 1996, no employment in the United States prior to July 1996, and he indicated that he had not left the United States since his last entry.

The only evidence of residence in the United States prior to 1996 that the applicant submitted was one affidavit, signed by [REDACTED] of Providence, New Jersey. [REDACTED] indicates that the applicant is his “friend and employee” and that the applicant has resided in the United States since November 1981. [REDACTED] does not indicate an address where the applicant resided in the United States, how frequently he had contact with him, or how he dates his initial acquaintance with the applicant. His statement lacks sufficient detail to be probative of the applicant’s initial entry or continuous residence during the statutory period.

On appeal, the applicant, through counsel indicates that he is currently detained by ICE and he “will provide proper evidence at the time of his interview.” He does not address inconsistencies noted by the director or provide any additional evidence to overcome the stated grounds for denial.

Every applicant for legalization 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)(1).

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)(1) 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 periods, 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).

Since the applicant, by his own admission, has failed to meet the burden of proof by a preponderance of the evidence that he entered the United States prior to January 1, 1982 and resided continuously in the United States for the requisite period, the appeal will be dismissed.

It is also noted that on December 2, 1999, an immigration judge ordered the applicant deported to Colombia, or in the alternative, that the applicant be granted voluntary departure until March 31, 2000. The applicant did not depart the United States and on January 25, 2007 he was detained. Immigration and Customs Enforcement (ICE) deported the applicant to Colombia on February 5, 2007.

Section 245A(a)(4)(A) of the Act requires an alien to establish that he or she is admissible to the United States as an immigrant in order to be eligible for temporary resident status. Section 245A(a)(4)(A) of the Act, 8 U.S.C. § 1255a(a)(4)(A). Section 212(a)(9)(A)(ii)(I) of the Act renders inadmissible aliens who have been ordered removed under Section 240 or any other provision under the law. Section 212(a)(9)(A)(ii)(I) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii)(I). Although this ground of inadmissibility may be waived pursuant to section 245A(d)(2)(B) of the Act, the record does not indicate that the applicant ever requested or was granted such a waiver.

Therefore, it is concluded that the applicant has failed to establish eligibility for the benefit sought. A review of the decision reveals the director accurately set forth a legitimate basis for denial of the application. The appeal must therefore be dismissed.

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