

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

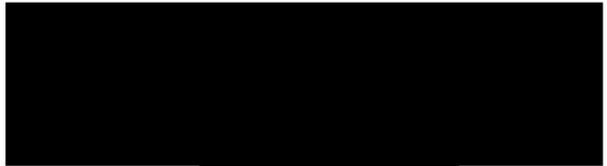
U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

L1

**PUBLIC COPY**



FILE:

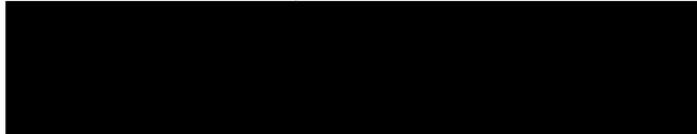
MSC 05 196 10196

Office: PHOENIX

Date: JAN 18 2008

IN RE:

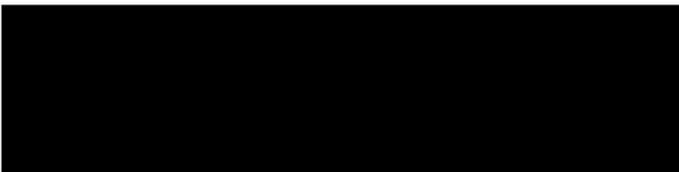
Applicant:



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:



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.

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, Phoenix, and 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 noted that the applicant had been absent from the United States for over 45 days, and had failed to establish that an emergent reason had delayed his return. The director therefore concluded 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, counsel for the applicant asserts that the applicant's absence was prolonged by an emergent reason, which did not interrupt the applicant's 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 Immigration and Nationality Act (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).

For purposes of establishing residence and presence in accordance with the regulation at 8 C.F.R. § 245a.2(b), "until the date of filing" shall mean until the date the alien attempted to file a completed Form I-687 application and fee or was caused not to timely file, consistent with the class member definitions set forth in the CSS/Newman Settlement Agreements. 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).

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

On his Application for Status as a Temporary Resident (Form I-687) the applicant claimed that he established a residence in the United States in 1981, and that he continuously resided in the United States since then. In No. 32, where absences from the United States were to be listed, he showed a total of three absences, one of which was for a time period that exceeded 45 days. Specifically, the applicant's first absence was from May 10, 1987 to August 2, 1987 for a total of 85 days.

On appeal, counsel for the applicant asserts and provides documentation in an attempt to establish that an emergent reason was the cause of the applicant's prolonged absence. Specifically, the record shows that the applicant left the United States to take care of his ailing mother. Supporting evidence includes letters from the applicant's siblings and the applicant's mother's doctor confirming the illness.<sup>1</sup> The applicant also submitted his own sworn declaration dated March 14, 2007 claiming that he intended to return to the United States within two weeks of his departure. The applicant readily admits that he knew his mother was sick and hospitalized, but claims that he did not know the gravity of her illness until he arrived to Guatemala. However, in the applicant's mother's sworn declaration, also dated March 14, 2007, [REDACTED] z states that the reason for the applicant's departure from the United States was the gravity of her illness and the possibility that she would not survive. While she claims that she grew sicker after the applicant's arrival to Guatemala, she also states that the applicant was informed of the gravity of her condition prior to his departure from the United States. Thus, while the applicant has established that there was a valid basis for his departure from the United States, the documentation provided on appeal leads to a conclusion that he intended to remain outside of the United States for as long as it took him to complete the purpose of his trip, that is, for an indefinite period. Having known that his mother was already hospitalized and in critical condition at the time of his departure, the applicant could have reasonably anticipated that his absence for the purpose of being with his ailing mother would have likely been an extended one. The applicant provided no evidence to establish that he truly intended to return to the United States within two weeks as he claimed. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

In his appellate brief, counsel compares the applicant in the present matter to the applicant in *Matter of C-*, asserting that the latter applicant's inability to purchase a ticket to return to the United States was similar to the current applicant's situation. 19 I&N Dec. 808. However, the record lacks evidence to suggest that the applicant's absence was prolonged as a result of financial difficulties. *See id.* Thus, in the absence of clear evidence that the applicant intended to return within 45 days, it cannot be concluded that an emergent reason

---

<sup>1</sup> These letters were previously submitted in support of the application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act. The application was denied on June 30, 2003 and the appeal from that decision was dismissed by the AAO on October 25, 2004.

"which came suddenly into being" delayed the applicant's return to the United States beyond the 45-day period. Therefore, it cannot be concluded that he resided continuously in the United States for the requisite period.

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). Due to the applicant's prolonged absence, the AAO concludes that the applicant 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.