

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

41



FILE: [REDACTED]
MSC 04-356-11386

Office: LOS ANGELES

Date: OCT 15 2008

IN RE: Applicant: [REDACTED]

L

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 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 during the requisite period. 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, the applicant asserts that he has been in the United States since December 16, 1973, and that he made a number of visits to Mexico to visit his wife and children. The applicant further asserts that none of his visits outside the United States was for more than three weeks.

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).

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 continuously resided in an unlawful status 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 Form I-687, Application for Status as a Temporary Resident, the applicant listed addresses for his residences in the United States from 1976 through the date the application was filed. At part #32 where the applicant is instructed to list all absences from the United States, he indicated that he was absent from the United States from February 20 through March 15 of 1987, and January 15 through February 15 of 1988. The applicant stated under oath during his interview on November 14, 2006 he departed the United States at the end of 1981 and returned to the United States in February or March of 1982.

In denying the application, the director noted that based upon the applicant's own testimony under oath, he departed the United States at the end of 1981 and returned in February or March of 1982. The director further noted that the applicant stated that he was absent from the United States in February of 1987 and returned to this country in two to three weeks. The director noted that although the applicant claimed only two absences from the United States, he testified under oath, before immigration officers on November 14, 2006, that he was married to his wife in Mexico in March of 1984, that his son was born in Mexico on January 30, 1985, and that his two daughters were born in Mexico on June 9, 1988. The director determined that based upon the applicant's own testimony coupled with the information contained in the record of proceeding, it appeared that the applicant was either residing, or had extended visits with his family outside the United States during the requisite period.

On appeal, the applicant asserts that his trips outside the United States never exceeded three weeks. He does not submit any evidence on appeal to substantiate his claim.

In the instant case, the applicant has failed to overcome the director's denial. The applicant has admitted to being absent from the United States on several occasions for less than 45 days. However, he has failed to provide independent documentation showing the specific dates of his absences.

Based upon the applicant's apparent absences from the United States, the AAO concludes that he has failed to establish that he has continuously resided in an unlawful status in the United States for the requisite period, as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E-M, supra*. The applicant is, therefore, ineligible for temporary resident status under Section 245A of the Act on this basis.

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