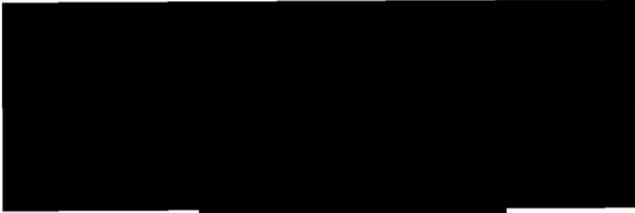


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship
and Immigration
Services



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FILE:



Office: NEW YORK

Date:

APR 02 2009

MSC 05 190 10028
[MSC 08 176 11195 – Appeal]

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. 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, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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)(1).

“Continuous unlawful residence” is defined at 8 C.F.R. § 245a.15(c)(1), as follows: “An alien shall be regarded as having resided continuously in the United States if *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, and May 4, 1988, unless the alien can establish that due to *emergent reasons*, his or her return to the United States could not be accomplished within the time period allowed.” (Emphases added.)

“Continuous physical presence” is described in section 1104(c)(2)(C)(i)(I) of the LIFE Act, 8 U.S.C. § 245A(a)(3)(B), and 8 C.F.R. § 245a.16(b), in the following terms: “An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of *brief, casual, and innocent absences* from the United States.” (Emphasis added.) The regulation further explains that “[b]rief, casual, and innocent absence(s) as used in this paragraph means *temporary, occasional trips abroad* as long as the purpose of the absence from the United States was consistent with the policies reflected in the immigration laws of the United States.” (Emphasis added.) 8 C.F.R. § 245a.16(b).

The applicant submitted a Form I-687, Application for Status as a Temporary Resident (Under Section 245A of the Immigration and Nationality Act), on April 8, 2005. The director denied the application on February 16, 2008, after determining that the applicant had failed to establish that he had continuously resided in the United States in an unlawful status since prior to January 1, 1982, and had been continuously physically present in the United States from November 6, 1986, until the date the application was filed. Specifically, the director determined that the applicant failed to submit sufficient credible and verifiable documentation to establish his qualifying continuous unlawful residence throughout the requisite time period. The director also determined that the applicant failed to establish that his absence from the United States from

August 1, 1987, to September 12, 1987, did not interrupt his continuous physical presence in that it was not “brief, casual, and innocent.”

The applicant, through counsel, filed a Form I-694, Notice of Appeal of Decision under Section 210 or 245A, on April 8, 2005. The Director, Missouri Service Center, initially rejected the appeal as untimely filed on April 15, 2008. The proceedings were subsequently reopened on motion, the decision to reject the appeal was withdrawn, and the appeal was forwarded to the AAO for processing.

On appeal, counsel asserts that the director’s demands and analysis regarding her finding that the applicant had failed to establish his continuous physical presence were unreasonable and that the director arbitrarily dismissed a document that had been provided by the applicant in response to a Notice of Intent to Deny (NOID) the application issued on January 11, 2008.

As stated in 8 C.F.R. § 103.3(a)(3)(iv), any appeal which is filed that fails to state the reason(s) 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 regarding the applicant’s failure to establish both his continuous unlawful residence and continuous physical presence, and that she did consider the documentation submitted by the applicant, including his response to the NOID. Counsel has not presented any new evidence on appeal, nor has he addressed the applicant’s failure to submit sufficient credible and verifiable documentation to establish his qualifying continuous unlawful residence throughout the requisite time period. Therefore, the appeal will be summarily dismissed.

As always in these proceedings, the burden of proof rests solely with the applicant. Section 245a.2(d)(5) of the Act.

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