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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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FILE: [REDACTED]
MSC 06 101 15023

Office: FRESNO

Date: **JUL 30 2009**

IN RE: Applicant: [REDACTED]

PETITION: 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 the matter 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.

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, Fresno, California, 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 (the Act), and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet. The director denied the application, finding that the applicant had not met his burden of proof and was, therefore, not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements. This decision was based on the director's determination that the applicant had exceeded the forty-five (45) day limit for a single absence from the United States during the requisite period.

On appeal, the applicant asserts that at the time of his interview he was never asked to provide evidence to establish the length of time he was outside of the United States. The applicant asserts that he was absent from the United States for approximately 50-60 days because his step-mother had died on October 5, 1987, and he had to take care of her husband.

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 residence*” is defined in the regulation at 8 C.F.R. § 245a.2(6)(h)(1), as follows:

Continuous residence. An applicant shall be regarded as having resided continuously in the United States if, at the time of filing the application:

- (i) 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 for temporary resident status is filed, 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. [Emphasis added.]

The applicant indicated on his Form I-687 application to have been absent from the United States from October 1987 to December 1987.

In denying the application, the director determined that, due to the applicant's absence from the United States from October 1987 to December 1987, he had failed to establish continuous residence in the United States.

On appeal, the applicant presents a death certificate and a declaration from a municipal judge written in the Spanish language. However, these documents will not be considered as the required English translations were not submitted. Any document containing foreign language submitted shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. 8 C.F.R. 103.2(b)(3).

While not dealt with in the director's decision, there must, nevertheless, be a determination as to whether the applicant's prolonged absence from 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."

In other words, the reason must be unexpected at the time of departure from the United States and of sufficient magnitude that it made the applicant's return to the United States more than inconvenient, but virtually impossible. However, this absence was not due to any "emergent reason" – *i.e.*, one that was unforeseen at the time of his departure. The applicant's prolonged absence would appear to have been a matter of personal choice, not a situation that was forced upon him by unexpected events. However commendable the applicant's decision may have been to stay with [REDACTED], the applicant's extended absence from the United States – far beyond the 45 days allowed by the regulation – was not "due to emergent reasons" outside of his control that prevented him from returning far sooner.

The applicant's 50 to 60-day stay in Mexico during the requisite period interrupted his "continuous residence" in the United States. Therefore, the applicant has failed to establish that he resided in the United States in a continuous unlawful status from before January 1, 1982 through the date he attempted to file his application.

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 absence, the applicant did not continuously reside in the United States for the requisite period. 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.