



U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED]  
MSC 05 326 13627

Office: LOS ANGELES

Date: DEC 18 2007

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: SELF-REPRESENTED

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, Los Angeles, California. The decision 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, on August 22, 2005. The district director noted that the applicant had been absent from the United States for two two-month periods during the requisite period. The district director therefore concluded that the applicant had not resided continuously in the United States, and denied the application.

On appeal, the applicant states that she was a minor child during both of her absences outside the United States and asserts that both absences were "casual and innocent."

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).

Under the CSS/Newman Settlement Agreements, for purposes of establishing residence and physical presence, in accordance with the regulation at 8 C.F.R. § 245a.2(b)(1), "until the date of filing" shall mean until the date the applicant attempted to file a completed Form I-687 application and fee or was caused not to timely file. 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).

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.1(c).

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 her Form I-687, Application for Status as a Temporary Resident, the applicant claimed that she and her parents established a residence in the United States in 1981, and that she continuously resided in the United States throughout the requisite period. In block 33, where absences from the United States were to be listed, she stated, "My parents always took me with them in going back to the Philippines."

During her interview with a CIS officer, the applicant signed a sworn statement under penalty of perjury attesting that she first left the United States in 1984 and was gone for two months to visit relatives in the Philippines. She further stated that she was subsequently outside the United States for two months in 1987.

On appeal, the applicant states:

When I first left [the] U.S. in 1984 for 2 months, I was only 14 yrs. old and the 2<sup>nd</sup> time in 1987 when I was 17 yrs. old for another 2 months. In both occasions my parents took me wherever they went and I was under their full direct guidance. My innocent and casual absences [from] the U.S. during that time was out of my matured decision and control.

The applicant on appeal repeats her statement that she was outside the United States for two months in 1984 and two months in 1987. As both of the applicant's absences 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 in each instance was due to an "emergent reason."

The applicant, on appeal, states that her parents took her with them when they traveled to the Philippines in 1984 and 1987. She has not claimed, or provided any evidence to establish, an emergent reason "which came suddenly into being" delayed her return to the United States beyond the 45-day period on either occasion. Due to her absences, it cannot be concluded that she resided continuously in the United States throughout the requisite period. She 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.