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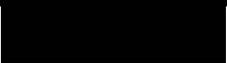


U.S. Citizenship
and Immigration
Services

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FILE: 
MSC-06-102-20730

Office: SAN FRANCISCO

Date: **AUG 26 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: 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, San Francisco. 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. The director determined that the applicant had not established by a preponderance of the evidence that he had continuously resided in the United States in an unlawful status for the duration of the requisite period. The director noted that the applicant, by his own admission, had been absent from the United States during a single trip for over forty-five (45) days. The director therefore determined 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 admits that he made the statement that he was absent from the United States from December of 1985 to August of 1988, but asserts that his statement was incorrect.

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).

For purposes of establishing residence and physical presence under the CSS/Newman Settlement Agreements, the term “until the date of filing” in 8 C.F.R. § 245a.2(b) means until the date the applicant attempted to file a completed Form I-687 application and fee or was caused not to timely file during the original legalization application period of May 5, 1987 to May 4, 1988. See 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).

The applicant 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 considered filed, unless the applicant can establish that due to emergent reasons the return to the United States could not be accomplished within the time period allowed, the applicant was maintaining residence in the United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.2(h)(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, 810 (Comm. 1988), holds that emergent means "coming unexpectedly into being."

At issue in this proceeding is whether the applicant has submitted sufficient evidence to establish that she continuously resided in the United States during the requisite period.

During his interview with Citizenship and Immigration Services (CIS) on December 6, 2006, the applicant stated under oath that he first entered the United States in January of 1981, and that he remained in the country until December of 1985, when he left the country to be with his mother who was ill. He further stated that he returned to the United States around July or August of 1988, and that he was outside of the United States for two and one-half years.

The applicant submitted an affidavit from [REDACTED] in which he stated that he was the owner of [REDACTED] in Stockton, California and that he employed the applicant from February of 1981 to December of 1985, when the applicant left because his mother was ill in Mexico. The affiant also stated that the applicant was employed as a mechanic, was paid minimum wage, and was paid in cash. The affiant further stated that the applicant returned from Mexico in 1987, and worked for him on an as needed basis. Here, the affiant's statements are inconsistent with what the applicant stated under oath during his immigration interview in that the applicant stated that he did not return to the United States from Mexico until July or August of 1988, and that he was outside of the United States for two and one-half years. The affiant's statement is also inconsistent with statements made by the applicant on his Form I-687 application at part #33 where he does not name [REDACTED] as a former employer. This inconsistency calls into question the affiant's ability to confirm that the applicant resided in the United States during the requisite period. Because the letter contains testimony that conflicts with what the applicant indicated on his Form I-687 application, doubt is cast on assertions made in the declaration. In addition, the declaration does not conform to regulatory standards for attestations by employers. Specifically, the affiant does not specify the address(es) where the applicant resided throughout the claimed employment period, nor does the affiant indicate whether the employment information was taken from company records. Neither has the availability of the records for inspection been clarified. 8 C.F.R. § 245a.2(d)(3)(i). Because this letter is inconsistent with statements made by the applicant and because it does not conform to

regulatory standards, it can be accorded little weight in establishing that the applicant resided in the United States during the requisite period.

On appeal, the applicant asserts that he incorrectly spoke during his interview with immigration officials, concerning his absence from the United States during the requisite period, and he requests that his file be reviewed and accessed based upon its contents. He does not submit any evidence.

In the instant case, the applicant has failed to overcome the basis of the director's denial. In light of the applicant's reliance on an affidavit with minimal probative value and his admission that he was absent from the United States from December of 1985 to approximately July or August of 1988, he has failed to demonstrate continuous unlawful residence in the United States for the requisite period. The applicant is therefore ineligible for temporary resident status under section 245A of the Act on that basis.

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