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U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: LOS ANGELES Date: DEC 22 2008

MSC 05-130-10533

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:

[redacted]

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.

Elizabeth O'Brien

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, Los Angeles. 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, 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 based upon the applicant's own testimony taken under oath during his interview with immigration officers on March 28, 2006, he had left the United States from December to January each year from 1981 to 1987. The director also noted that the attestations and other evidence submitted were not credible. The director further determined that the applicant was therefore not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, counsel asserts that the evidence submitted by the applicant is credible and verifiable. Counsel also asserts that the attestations submitted are consistent with the applicant's statements. Counsel further asserts that the applicant continuously resided in the United States in an unlawful status for the duration of the requisite period and that his periodic absences from the United States were for no more than 2 weeks during any single trip from 1981 to 1987. The applicant does not submit any evidence on appeal.

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 credible evidence to meet his burden of establishing continuous unlawful residence in the United States during the requisite period. Here, the applicant has failed to meet this burden.

The record of proceeding shows that the applicant submitted a Form I-687 Application and Supplement to United States Citizenship and Immigration Services (USCIS), on February 7, 2005. The applicant indicated at part # 30 of the Form I-687 Application where his places of residence were to be listed, he indicated that he resided at [redacted] in Stockton, California from May of 1979 to 1980; at [redacted] in Tracy, California from 1980 to December of 1983; and at [redacted] in Los Angeles, California from December of 1983 to 1988. He indicated at part #32 his multiple absences from the United States from December of 1980 to June of 1989 as listed in the record of proceeding.

The director determined that based upon the applicant's own testimony taken under oath during his interview with immigration officers on March 28, 2006, that he left the United States each year during the requisite period from December to January to visit his family. The applicant stated on his Form I-687 Application at part #32 where he was asked to list his absences from the United States, he listed 12 absences as noted in the decision. However, counsel asserts on appeal that no single absence exceeded the 45 day statutory limitation or an aggregate in excess of 180 days during the requisite period.

The applicant submitted a declaration dated December 30, 2004, from his wife [redacted] in which she stated that the applicant came to the United States in 1979 and resided with

his uncle . She further stated that the applicant visited her in Mexico in December of 1980 and returned to the United States in January of 1981, and that he would visit her every Christmas and whenever he was able to get vacation time. Here, the declarant has failed to specify the dates during which the applicant was absent from the United States and exactly how many trips the applicant took to see his family in Mexico.[1] To meet his burden of proof, the applicant must provide evidence of eligibility apart from his own testimony. 8 C.F.R. § 245a.2(d)(6). Here, the applicant has failed to provide supporting documentation for his absences from the United States.

The applicant submitted the following documentation as evidence:

- A copy of the applicant's Statement of Income from the Social Security Administration in which it shows his social security number ending in and reported income for the tax years 1989 to 2002.

- Copies of two pay stubs from All Pure Chemical Company, Inc. dated November 12, 1979 and December 4, 1979 that do not contain the applicant's name.

- Copies of pay stubs from All Pure Chemical Company, Inc. dated June, July and December of 1983 bearing the employee name of " ' with a social security number of [2]

This evidence is either irrelevant to the requisite period or is unrelated to the applicant, and therefore, is insufficient to support his claimed residence in the United States during the requisite period.

The applicant submitted declarations from and , and their sons and in which they stated that the applicant resided at their family home at in Stockton, California in 1979, and that he eventually relocated to Los Angeles, California. However, the declarant's statements with respect to the time period during which the applicant resided in Los Angeles, California are inconsistent with statements made by the applicant in his Form I-687 application at part #30, and are contradictory to one another. It is further noted that the declarants fail to specify the applicant's place of residence during the requisite period. Therefore, the declarations fail to establish the applicant's continuous unlawful residence in the United States for the duration of the requisite period.

The applicant submitted declarations from , and and in which they stated that they met the applicant in 1981, 1985 and 1987, respectively. They also attest to the applicant being physically present in the United

[1] It is noted by the AAO that the applicant's wife failed to specify in her declaration dated December 30, 2004, the applicant's place of residence in the United States during the requisite period or the extent to which she communicated with him while he was in the United States.

[2] It is also noted by the AAO that the applicant lists his social security number as .

States during the requisite period. The statements made by the declarants are inconsistent with statements made by the applicant under oath during his immigration interview on March 28, 2006, when he said that he met in 1982, and that he met and in 1984. Therefore, the declarations can be afforded little weight in establishing that the applicant resided in the United States for the duration of the requisite period.

The director determined that the applicant had failed to submit sufficient evidence to establish his continuous unlawful residence in the United States throughout the requisite period.

On appeal, counsel reasserts the applicant's claim of eligibility for temporary resident status. The applicant does not submit any evidence on appeal.

In the instant case, the applicant has failed to provide sufficient, credible and probative evidence to establish his continuous unlawful residence in the United States throughout the requisite period. He has failed to overcome the issues raised by the director. Although counsel asserts that the applicant's absences did not exceed the statutory limits, there has been no independent documentation submitted to substantiate that claim. The declarations submitted on behalf of the applicant are inconsistent with one another, inconsistent with statements made by the applicant, and are lacking in detail, with little probative value.

There has been no explanation given for the multiple discrepancies noted above. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous unlawful residence in the United States for the entire requisite period seriously detracts from the credibility of this claim. Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the applicant's reliance upon evidence that is contradictory, lacking in detail, and inconsistent with statements he made on his Form I-687, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States for the requisite period 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.