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

PUBLIC COPY

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[Redacted]

FILE:

[Redacted]

Office: PORTLAND

Date: FEB 25 2008

MSC 05 292 12093

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. 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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

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, Portland, 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 (Act), and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet. The director noted that the applicant had been absent from the United States for over 45 days, and had failed to establish that an emergent reason had delayed his return. The director therefore concluded 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, counsel for the applicant asserts that the applicant's absence was prolonged by an emergent reason, which did not interrupt the applicant's continuous residence.

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 Immigration and Nationality Act (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).

For purposes of establishing residence and presence in accordance with the regulation at 8 C.F.R. § 245a.2(b), "until the date of filing" shall mean until the date the alien attempted to file a completed Form I-687 application and fee or was caused not to timely file, consistent with the class member definitions set forth in the CSS/Newman Settlement Agreements. See CSS Settlement Agreement paragraph 11 at page 6, and the 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).

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.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 (Comm. 1988), holds that emergent means "coming unexpectedly into being."

The record shows that the applicant submitted a Form I-687 application and Supplement to Citizenship and Immigration Services (CIS) on July 19, 2005. The record also shows that the applicant testified under oath during an interview with Citizenship and Immigration Services (CIS) on May 25, 2006, that he first entered the United States in 1981. At part #30 of the Form I-687 application where the applicant was asked to list all residences in the United States since first entry, the applicant listed his first address in the United States to be [REDACTED] Woodburn, Oregon, from June of 1992 to March of 1993. Similarly, at part #33, the applicant indicated that his first employment in the United States was through [REDACTED] located in Mt. Angel, Oregon, from July of 1992 to May of 1993. The applicant's testimony with reference to his initial entry into the United States is inconsistent with the information he provided in his Form I-687 application. Because his testimony conflicts with what the applicant showed on his Form I-687 application, doubt is cast on assertions made the applicant. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt 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 applicant also testified during his interview that he remained in the United States until July of 1984 when he traveled to Mexico after receiving word that his mother was ill. He further stated that he returned to the United States in October of 1984. The applicant stated during the interview that he departed from the United States in 1987 and did not return to the country until 1992. It is not clear from the record when in 1987 the applicant left the United States. The AAO also notes that the applicant failed to indicate at part #32 of his Form I-687 application any absences from the United States.

The director determined that the applicant failed to provide sufficient proof of his continuous unlawful residence in the United States during the requisite period.

On appeal, the applicant asserts that an emergent reason was the cause of his prolonged absence from the United States in 1984. Specifically, the applicant states in a sworn declaration that he first learned of his mother's illness in May of 1984, that left the United States in July of 1984 when her illness worsened, and that he returned to the United States in October of 1984 after his mother's health began to improve. Supporting evidence includes a translated letter from the applicant's

mother's doctor confirming her illness. The applicant readily admits that he knew his mother was sick and hospitalized, and also was informed of the gravity of her illness prior to his departure from the United States. Thus, while the applicant has established that there was a valid basis for his departure from the United States, the documentation provided on appeal leads to a conclusion that he intended to remain outside of the United States for as long as it took him to complete the purpose of his trip, that is, for an indefinite period. Having known that his mother was already hospitalized and in serious condition at the time of his departure, the applicant could have reasonably anticipated that his absence for the purpose of being with his ailing mother would have likely been an extended one.

The applicant provided no evidence to establish that he truly intended to return to the United States within 45 days. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Here, the record lacks evidence to suggest that the applicant's absence was prolonged as a result of unanticipated circumstances. See *Matter of C-*, *supra*. Thus, in the absence of clear evidence that the applicant intended to return within 45 days, it cannot be concluded that an emergent reason "which came suddenly into being" delayed the applicant's return to the United States beyond the 45-day period. Therefore, it cannot be concluded that the applicant resided continuously in the United States for the requisite period.

Beyond the decision of the director, the AAO notes that even if the applicant's prolonged absence from the United States was based upon an emergent reason, the record of proceedings does not contain sufficient evidence to establish the applicant's continuous unlawful residence in the United States through the requisite period. Specifically, the applicant submitted a letter from [REDACTED] of Sun Valley Harvest, Inc. in which he stated that [REDACTED] was employed as a seasonal worker from 1981 to 1987. The applicant also submitted an affidavit from [REDACTED] in which he stated that he knew the applicant's father [REDACTED] from 1981 to 1987 because they worked together as seasonal workers. The affiant also stated that [REDACTED] and his son lived at [REDACTED], El Centro, California. Based upon the evidence submitted, it appears that the applicant's father, not the applicant was employed as a seasonal worker. It is also noted that it is unlikely that the applicant, at age 12, would have been employed as he claims. It is further noted that the applicant fails to indicate on his Form I-687 application that he was employed in the United States from 1981 to 1987.

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 applicant's prolonged absence for three months, the AAO concludes that the applicant did not continuously reside in the United States for the requisite period.

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