

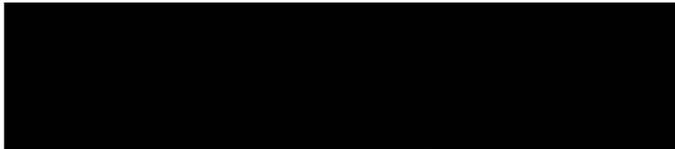
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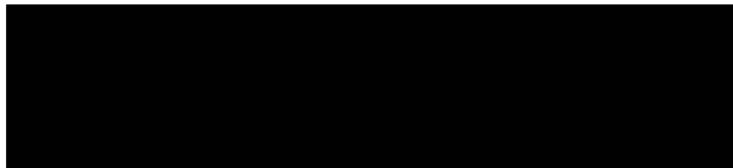
MSC 05 243 11725

Office: LOS ANGELES

Date: JAN 23 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. 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, 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 determined that the applicant had not established by a preponderance of the evidence that she had continuously resided in the United States in an unlawful status for the duration of the requisite period. Specifically, the director noted that the applicant provided inconsistent information with regard to the number of times she was absent from the United States and, more importantly, the length of one of her absences. The director denied the application, finding that the applicant had not met her burden of proof 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 restates the date of the absence she claimed on both of her Form I-687 applications and denies having multiple and/or prolonged absences during the statutorily relevant time period.

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. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

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.15(c)(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."

On her Application for Status as a Temporary Resident (Form I-687) the applicant claimed that she established a residence in the United States in 1981, and that she continuously resided in the United States since then. In no. 32, where absences from the United States were to be listed, the applicant indicated a single absence in August 1987. However, according to the notes of a U.S. Citizenship and Immigration Services (CIS) officer who had previously interviewed the applicant in connection with her application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act, the applicant stated that she departed the United States in March 1987 and remained outside of the United States for four months. The stated reason for the absence was the death of the applicant's grandfather. The applicant further stated that the absence was prolonged because she stayed with her mother who was sad as a result of her loss of a loved one. Thus, the information provided by the applicant at her LIFE Act interview was significantly different from the information she provided later at her legalization interview in connection with her application for temporary resident status. 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 will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

In a decision dated February 28, 2007, the director denied the application, basing her decision, in large part on the lack of credibility suggested by the fact that the applicant provided inconsistent information regarding her absences from the United States. The director also determined that the applicant admitted to having been absent from the United States for approximately four months, which is longer than the allowed time period discussed in 8 C.F.R. § 245a.15(c)(1).

On appeal, the applicant merely reiterates the information she provided on her Form I-687 application, but fails to address the inconsistency singled out by the director in her decision. However, 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)). Moreover, the applicant's failure to provide supporting evidence ultimately precludes any clarification of the inconsistency created by the applicant provided during various stages of the legalization process.

As the applicant has not stated on appeal that her absence in 1987 lasted longer than 45 days, the AAO need not address the issue of whether the absence was prolonged due to an emergent reason.

In the absence of any other information, it is concluded that the applicant was absent for four months, as she stated to the interviewing officer in connection with her LIFE Act application. Therefore, it cannot be concluded that she resided continuously in the United States for the requisite time period.

Additionally, the AAO notes for the record that on May 3, 1993, the applicant pled guilty and was convicted of petty theft, a misdemeanor offense in violation of California Penal Code section 488. (San Bernardino County Municipal Court, District West Valley Division, Docket # [REDACTED]).

Regardless, 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.

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