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U.S. Citizenship
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FILE: MSC 06 077 12901

Office: NEW YORK Date:

JUL 31 2008

IN RE: Applicant:



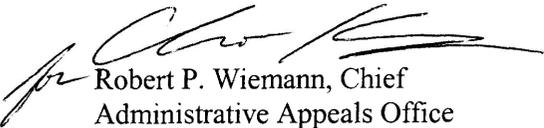
APPLICATION: Application for Temporary Resident Status under Section 245A of the
Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office on your appeal. You no longer have a case pending before this office. If your appeal was sustained or the matter was remanded for further action, your file has been returned to the office that originally decided your case, and you will be contacted. If your appeal was dismissed or rejected, your file has been sent to the National Benefits Center. 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, New York. The appeal will be dismissed.

The director denied the application because the applicant failed to demonstrate credibly that she entered the United States before January 1, 1982, and thereafter resided in the United States in a continuous unlawful status. On appeal, counsel asserts that the director reached an incorrect conclusion on the evidence and submits additional evidence.

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 (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).

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)(1) 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. 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).

As to the requirement of continuous residence in the United States from January 1, 1982 through the date the application is filed, the regulation at 8 C.F.R. § 245a.2(h)(1) provides that an applicant shall be regarded as having resided continuously if no single absence during the salient period was longer than 45 days and the aggregate of all absences does not exceed 180 days.

Although the regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R.

§ 245a.2(d)(3)(vi)(L). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.2(d)(6).

The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). In evaluating the evidence, *Matter of E-M-* also stated that "[t]ruth is to be determined not by the quantity of evidence alone but by its quality." *Id.* Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the applicant submits relevant, probative, and credible evidence that leads the director to believe that the claim is "probably true" or "more likely than not," the applicant or petitioner has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (1987) (defining "more likely than not" as a greater than 50 percent probability of something occurring). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment must provide the applicant's address at the time of employment, identify the exact period of employment, show periods of layoff, state the applicant's duties, declare whether the information was taken from company records, and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

On her Form I-687 application the applicant stated, that she was admitted to the United States on March 29, 1982 on a B-2 nonimmigrant visitor's visa, and that her authorized stay expired on April 19, 1983.

On her application, the applicant stated that she lived at [REDACTED] in Brooklyn, New York, from May 1981 to August 1981, and at [REDACTED] New York, from August 1981 through July 1989.

The applicant was also required to list, at item 33 on the application, all of her employment since January 1, 1982. The applicant indicated that she worked (1) for [REDACTED] of Brooklyn, New York, as a housekeeper, from May 1982 to September 1984, (2) for The Brooklyn Hospital Center, in Brooklyn, New York, as a Licensed Practical Nurse, from August 1988 to October 1996, and (3) for the Jamaica Hospital Medical Center, in Jamaica, New York, as a Licensed Practical Nurse, from March 1997 until she signed that application on November 10, 2005. This office notes that the applicant did not list any employment from October 1984 to July 1988.

The pertinent evidence in the record is described below.

- The record contains a letter, dated October 6, 2005 and addressed to the applicant at 70 Linden Boulevard, from a customer service representative at ConEdison, the New York electrical service, stating that the applicant has a good payment record. That letter bears a notary's stamp, but no indication that the declarant swore to the contents of the letter or that the notary is attesting to the signature on the letter. The purpose and significance of that notary's attestation is unknown to the office and it does not convert the letter to an affidavit or otherwise provide additional evidentiary value to it. In any event, because that letter does not indicate when the applicant came to the United States it provides no support for the applicant's claim of continuous residence in the United States during the requisite period.
- The record contains a handwritten letter, dated October 6, 2005, on the letterhead of the Albee Dental Care clinic in Brooklyn, New York. That letter states that the applicant has been a patient at that clinic "for more than 20 years." Although that letter bears a New York notary's seal, the notary did not attest that the letter's writer swore to the contents or subscribed the letter before her. The significance of that notary's seal is unclear, but it does not appear to qualify the letter as an affidavit or to otherwise increase its credibility. That letter does not state how regularly the applicant was seen at that clinic. This office finds the letter highly credible for the proposition that the applicant first went to the clinic no later than 1985, and has returned an unknown number of times at unknown intervals. As such, however, it is of very little value in showing continuous residence.
- The record contains a photocopy of two receipts provided to the applicant for payments made to [REDACTED] of Brooklyn, New York. The receipts are for payments of \$40 and \$50 for treatment of [REDACTED] and are both dated June 28, 1983. That photocopy contains a notary's attestation that states, "The foregoing document was acknowledged before me this 10th day of November 2005." The notary did not indicate who "acknowledged" that photocopy. The significance of that notary's attestation is unclear, but it does not transform the receipts into affidavits or to otherwise increase their evidentiary value. Those receipts will be accorded moderate evidentiary value for the proposition that the applicant was present in the United States on June 28, 1993.
- The record contains a certificate from Pace University's New York campus. The certificate indicates that the applicant attended an 86-hour class in Psychiatric Nursing from May 13, 1983 to July 29, 1983. This office accords that certificate moderate evidentiary value for the proposition that the applicant was in the United States during that period.
- The record contains a letter, dated August 1, 1983, from the Lienhard School of Nursing Center for Continuing Education in Nursing & Health. That letter states that the applicant passed the Pace University class. That letter provides additional support for the proposition that the applicant was in the United States from May 13, 1983 to July 29, 1983.

- The record contains a registration certificate, dated June 25, 1984, from the University of the State of New York. That license states that the applicant is qualified to practice as a licensed practical nurse. The record contains another registration certificate from the University of the State of New York indicating that the applicant's registration period would end on August 31, 1987. Whether the applicant was required to be present in the United States in order to be awarded those registration certificates is unknown to this office. They do, however, support the proposition that the applicant, when she applied for those registration certificates, intended to continue to work in the United States.
- The record contains a certificate, issued November 1985, from the Commission on Graduates of Foreign Nursing Schools (CGFNS). That certificate indicates that it was awarded based on the applicant's qualifying to take, and passing, both the English language and Nursing portions of the CGFNS qualifying examination. That certification does not indicate where the examinations were administered. Whether presence in the United States at any time was required in order to be awarded that certificate is unclear.
- The record contains a High School Equivalency Diploma and transcript issued to the applicant by the University of the State of New York. The transcript indicates that the diploma was awarded December 2, 1985. This office finds that being awarded that diploma required the applicant's presence in the United States to take the High School Equivalency test sometime prior to December 2, 1985. That letter is accorded high evidentiary value for the proposition that the applicant was, in fact, in the United States sometime shortly before December 2, 1985.
- The record contains a notarized letter dated February 6, 1988 from Neville Henry that states that his address is [REDACTED] New York. The affiant stated that he has known the applicant since she entered the United States during 1981. The letter states, "[The applicant] has resided at [REDACTED] New York] since [her entry during 1981.]" That letter was attested to by a notary on February 10, 1988. The significance of the discrepancy between the date of the letter and the date of the attestation is unknown to this office. The affiant did not state the nature of his relationship to the applicant. This office notes that, according to that letter and the address provided by the applicant, [REDACTED] and the applicant appear to have shared an apartment. Further, the statement that the applicant lived at [REDACTED] her entry into the United States appears to conflict with the applicant's statement, on her Form I-687 application, that she initially lived at [REDACTED]. Because of the various irregularities cited, and because the evidence it contains conflicts with the applicant's own residential history, that notarized letter, standing alone, would be accorded very little evidentiary value.
- The record contains another notarized letter from N [REDACTED]. That letter, which is dated November 10, 2005, states that [REDACTED]'s address is [REDACTED]. In that letter [REDACTED] stated that the applicant lived, as his tenant, at [REDACTED]

Apartment B-2, from August 1981 to July 1989, and that she previously lived with him and his family at [REDACTED] from May of 1981 to August of 1981. This office notes that this letter differs from [REDACTED] previous letter both as to the applicant's residential history and as to [REDACTED] own address. Because of those discrepancies, that letter is accorded very little evidentiary value.

- The record contains a letter dated February 8, 1988 from [REDACTED] of Brooklyn, New York, who stated that she has known the applicant since 1981. That letter bears the stamp of the New York City Commissioner of Deeds. That stamp does not indicate that [REDACTED] swore to the contents of the letter and does not attest to her signature. The purpose for which that stamp was placed on the letter is unknown to this office but, in any event, it does not serve to convert the letter into a sworn document and does not lend anything to the evidentiary value of the letter. Further, that letter does not indicate that the applicant ever lived in the United States. That letter is accorded no evidentiary value.

The record contains a Lease Extension Agreement, dated June 1, 1985 from the J.R.D. Management Corporation of New Rochelle, New York, addressed to [REDACTED] [REDACTED] in Brooklyn, New York. That document states that Mr. [REDACTED] s lease of that apartment was due to expire on December 30, 1985, and offered him either a one-year or a two-year extension. The record contains a nearly identical Lease Extension Agreement dated August 6, 1987 and addressed to [REDACTED] offering to extend the lease on the same apartment for either one or two years. The record contains photocopies of two cancelled money orders drawn by [REDACTED] to J.R.D. Management Corporation, each for \$350.

This office notes that the lease extension documents appear to indicate that [REDACTED] was a tenant at [REDACTED] rather than the landlord, as he represented in his November 10, 2005 letter. Those documents support the proposition that [REDACTED] was a long-time resident at the [REDACTED] They do not support the proposition that the applicant lived there.

- The record contains a photocopy of a B-2 nonimmigrant visa issued to the applicant on October 2, 1980.
- The record contains a list of questions asked of the applicant by a CIS officer at an interview on an unknown date, and the applicant's responses. At that interview the applicant stated that she initially entered the United States during May 1981, returned to Antigua during December 1981, and returned to the U.S. during March 1982. The applicant stated that the reason for her absence from the United States from December 1981 to March 1982 was "hardship." This office notes that an absence from December 1981 to March 1982 would have encompassed at least 61 days, including at least 60

within the period of requisite residence.¹ This office further notes that the applicant's assertion of having first entered the United States during May 1981 conflicts with her previous assertion on her I-687 application that she entered the United States on October 2, 1980. The applicant's assertion that she entered on October 2, 1980 is supported by the photocopy of a non-immigrant visa, which is described above. The relevant proposition for which that interview provides the strongest inference is that the applicant was absent from the United States for more than 45 consecutive days during the period of requisite residence in the United States.

The record contains a previous Form I-687 application that the applicant signed on either February 6, 1988 or March 2, 1988. On that application the applicant stated that she has two children, [REDACTED]. The applicant also stated that she last entered the United States on December 19, 1981 and that she had not left the United States since then. This assertion conflicts with the applicant's assertion at her interview that she was absent from the United States from December 1981 to March 1982. It also contradicts her assertion on the instant Form I-687 application, which is supported by her photocopied visa petition, that she first entered the United States on March 29, 1982. The applicant's assertions on that application are accorded no evidentiary weight.

- The record contains a letter, dated February 27, 1988, from [REDACTED] president of American Healthco of [REDACTED], New York. The body of that letter reads, in pertinent part, as follows:

This is to verify that [REDACTED], social security [REDACTED], who resides at [REDACTED] employed by American Healthco as a Nurse's Aide from September 1982 to 1984 and as an L.P.N. from September 1984 to present.

This office notes that, at item 33 of the Form I-687 application, the applicant was required to list all of her employment since January 1, 1982. The application did not list any employment for American Healthco, did not list any employment as a nurse's aide, and did not list any employment at all from October 1984 to July 1988.

Further, as was noted above, 8 C.F.R. § 245a.2(d)(3)(i) requires that letters from employers attesting to an applicant's employment must provide, *inter alia*, periods of layoff, and declare whether the information was taken from company records, and identify the location of such company records and state that such records are accessible or in the alternative state the reason why such records are unavailable. The letter from Mr. [REDACTED] did not conform to those requirements of the governing regulation. Pursuant to

¹ An absence from December 1981 to March 1982 would necessarily have encompassed at least one day of December 1981, all 31 days of January 1982, all 28 days of February 1982, and at least one day of March 1982. January, February, and March of 1982 were within the period of requisite residence.

8 C.F.R. § 245a.2(d)(3)(vi)(L) that letter will be considered, but it will be accorded less evidentiary weight than it would have been if it conformed to the regulations.

Notwithstanding that the applicant failed to list her employment for American Healthco, this office finds that the letter is convincing evidence in support of the proposition that the applicant worked for American Healthco beginning in 1982 and at various times since. This office does not find it to be convincing evidence that the applicant has continuously resided in the United States since 1982, however, as the letter does not allege that her employment was regular or indicate during what periods since 1982 American Healthco may not have actively employed the applicant.

- The record contains 1982 and 1983 Form W-2 Wage and Tax Statements showing that American Health Co. Home Personnel Inc., of ██████████ paid the applicant wages of \$410.55 and \$1,679.60 during those years, respectively. The relationship, if any, of that company to American Healthco, with an address approximately four blocks distant, is not made clear. Although the W-2 forms are convincing evidence that the applicant worked for that company during some portions of those years, the amounts shown demonstrate that the employment did not encompass either of those years in its entirety. Those W-2 forms are not, therefore, evidence in support of the proposition that the applicant continuously resided in the United States during those years.
- The record also contains a 1984 Form 1096 Miscellaneous Income statement showing that American Health Co. Home Personnel Inc. paid her \$9,021.51 in non-employee compensation during that year. This compensation, again, demonstrates that American Healthco employed the applicant during some portion of 1984, but is not evidence that the applicant continuously resided in the United States during that year.
- The record contains pay stubs for wage checks that American Health Co. Home Personnel paid to the applicant on November 26, 1982, December 23, 1982, March 25, 1983, April 8, 1983, January 13, 1984, December 28, 1984, January 4, 1985, February 22, 1985, January 10, 1986, February 21, 1986, and December 24, 1987. Those pay stubs show gross pay of \$71.88 \$64.03, \$58.74, \$15.77, \$78.20, \$259, \$392, \$259, \$291.41, \$309.75, and \$770, respectively. The December 28, 1984 pay stub shows year-to-date gross wages of \$9,021.51. All of those pay stubs demonstrate that the applicant worked for American Health Co. at various times, but they strongly suggest that the employment was not continuous, and are not, therefore, evidence of continuous residence in the United States during any period.
- The record contains pay stubs issued to the applicant by American Healthco for the pay periods ending January 1, 1988 and February 12, 1988. The applicant earned gross wages of \$550.50 and \$385 during those pay periods, respectively. Those pay stubs do not show that the applicant resided continuously in the United States during any period.

- The record contains a pay stub issued to the applicant by the B&G Nurses Registry, Inc. of Brooklyn, New York, showing that the applicant earned \$90 during the pay period from October 13, 1987 to October 22, 1987. That pay stub is convincing evidence that the applicant was in the United States during some portion of that pay period, but not that she resided continuously in the United States during any period.
- The record contains a temporary identification card issued to the applicant by the Kingsbrook Jewish Medical Center, of Brooklyn, New York, on March 8, 1988 identifying her as a Per Diem L.P.N. That card demonstrates that the applicant was in the United States during that date.
- The record contains a letter, dated October 6, 2005 from the Client Support Unit of the Citibank Service Center in San Antonio, Texas, stating the dates on which the applicant opened accounts with that bank. The letter states that the applicant opened a savings account on November 9, 1981, a checking account on December 4, 2002, and another savings account on December 27, 2002. Although that letter bears a New York notary's seal, the notary did not attest that the letter's writer swore to the contents or subscribed the letter before her. The significance of that notary's seal is unclear, but it does not appear to qualify the letter as an affidavit or to otherwise increase its credibility. Notwithstanding the notary's stamping that letter without attestation, that letter is very credible and is accorded great evidentiary value for the proposition that the applicant was in the United States prior to January 1, 1982 and resided there for some period of time.
- The record contains a 1987 interest statement from Citibank showing the applicant's address as [REDACTED]. That statement further supports the inference of the October 6, 2005 letter from Citibank Client Support, that the applicant has lived in the United States.
- The record contains a Citibank account statement issued to the applicant and [REDACTED] on January 20, 1988. That statement shows that they lived at the [REDACTED] Street address. That the applicant and [REDACTED] maintained a bank account implies that they intended to be in the United States on a regular basis since 1981, though not necessarily that they continuously resided in the United States. Coupled with the 1987 Citibank interest statement and the October 6, 2005 letter from Citibank's Client Support Unit of the Citibank Service Center, that account statement supports the inference that the applicant has lived and worked in the United States since October 9, 1981, though not necessarily continuously.
- The record contains a September 1987 gas bill for service to [REDACTED]. The customer's name is not stated on that bill. That bill does not support any inference in favor of the applicant's eligibility.
- The record contains an electric bill for service to [REDACTED]. The customer is not identified by name. That bill also does not support the applicant's case.

- The record contains a November 28, 1987 telephone bill issued to [REDACTED] for service at the [REDACTED]. As it conflicts with other evidence in the record, that bill does not clarify whether the applicant lived at [REDACTED] or at [REDACTED] Street, or what his relationship to the applicant is, nor does it otherwise support the applicant's case.
- The record contains a rent receipt for the [REDACTED]. The tenant's name is Henry. That receipt was issued by J.R.D. Management Company. Again, that evidence supports the proposition that [REDACTED] was the tenant at [REDACTED] and does not support the applicant's case.
- The record contains another rent receipt from J.R.D. Management Corporation dated February 1, 1988. That receipt does not identify the tenant. That receipt does not support the applicant's case.
- The record contains a room rent receipt showing that, during December 1981, the applicant paid \$200 to [REDACTED] for rent from December 31, 1981 to January 31, 1982. The receipt does not identify the address of the room the applicant allegedly rented during that month. This evidence seems to conflict with the assertion of [REDACTED] in his November 10, 2005 letter, that the applicant was his tenant from August 1981 to July 1989.

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. Further, the applicant must resolve any inconsistencies in the record with competent, independent, objective evidence. Attempts to explain or reconcile such inconsistencies, absent competent objective evidence sufficient to demonstrate where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (Comm. 1988). Because it directly conflicts with other evidence the applicant provided, not only does that receipt not support the applicant's case, it degrades the credibility and evidentiary value of the remaining evidence.

- The record contains a receipt dated March 29, 1982, showing that the applicant purchased a dinette set from an unidentified store on March 29, 1982. This office notes, because the store is unidentified, confirmation of the sale, or even the existence of the store, is impossible. Because it is not amenable to verification, and in view of the discrepancies found in the other evidence provided, that receipt will be accorded no evidentiary value.
- The record contains copies of the applicant's 1983 and 1988 income tax returns. Those returns show that the applicant had total income of \$1,679.60 and \$9,709 during those years, respectively. The record contains an amended 1988 income tax return in which the applicant stated that she earned \$17,480 during that year. This office accepts those returns as evidence that the applicant worked in the United States during some portion, at

least, of those years, but not as evidence that she continuously resided in the United States within the meaning of section 245A(a)(2) of the Act and 8 C.F.R. § 245.a2(h)(1).

- The record contains photocopied pages of the applicant's Antiguan passport. The passport indicates that the applicant entered the United States on May 3, 1981 and returned to Antigua on December 19, 1981. The passport further indicates that the applicant entered the United States again on March 29, 1982, and that the visa was twice extended. This office notes that an absence from December 19, 1981 to March 29, 1982 would encompass 100 days, including 88 during the period of requisite residence.²

The record contains no other evidence pertinent to the applicant's residence in the United States during the salient period.

In a Notice of Intent to Deny (NOID), dated June 17, 2006, the director noted the dates of entry into and exit from the United States shown on the applicant's passport and found that they indicate that she did not continuously reside in the United States in an illegal status during the requisite period. The director granted the applicant thirty days to submit additional evidence.

In response the applicant submitted the photocopies of her passport and New York State Identification Card, both of which are described above. In the Notice of Decision, dated July 28, 2006, the director denied the application based on the reasons stated in the NOID.

On appeal, counsel submitted additional evidence, which is included in the descriptions above, and a brief. In the brief, counsel argued that the application should be approved because the applicant resided continuously in the United States without any individual absence of more than 45 days and without aggregated absences of more than 180 days.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate entry into the United States prior to January 1, 1982, and continuous residence during the requisite period.

This office perceives little doubt that the applicant has resided in the United States for extended periods. The record is replete with various items of evidence, detailed above, that show that the applicant lived and worked in the United States beginning in 1980 or 1981. At issue, however, is whether her residence in the United States has been continuous during the requisite period within the meaning of 8 C.F.R. § 245a.2(h)(1).

The applicant's passport indicates that the applicant was absent from the United States from December 19, 1981 through March 29, 1982. That absence includes 88 consecutive days during the period of requisite residence. In an interview before an officer of CIS, the applicant confirmed that she left the United States during December 1981 and returned to the United States during March 1982. Again, such an absence necessarily includes more than 45 days within the requisite period.

² That is, 31 days during January, 28 days during February, and 29 days during March.

The applicant was absent from the United States for more than 45 consecutive days during the requisite period. The applicant's conclusory statement at her interview that she was absent based on "hardship" is insufficient to demonstrate that the applicant's prolonged absence was due an emergent reason within the meaning of 8 C.F.R. § 245a.2(h)(1)(i) as explained in *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988).

The applicant did not, therefore, reside continuously in the United States during the requisite period. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis. The application was correctly denied on that basis, which has not been overcome on appeal. The appeal will be dismissed.

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