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U.S. Citizenship
and Immigration
Services

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FILE:

MSC-06-055-12102

Office: NEW YORK

Date:

MAY 22 2008

IN RE:

Applicant:

APPLICATION:

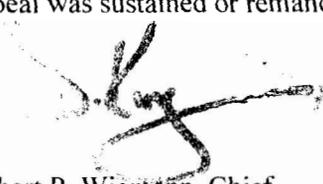
Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

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, New York. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because she found the evidence submitted with the application was insufficient to establish eligibility for Temporary Resident Status pursuant to the terms of the CSS/Newman Settlement Agreements. Specifically, in her Notice of Intent to Deny (NOID), issued May 15, 2006, the director noted that at the time of his interview with a Citizenship and Immigration Services (CIS) officer on May 9, 2006, the applicant stated that he had two absences from the United States during the requisite period that exceeded 45 days. The director noted that the applicant did not indicate at the time of his interview that his return to the United States was delayed because of an emergent situation that came suddenly into being. Therefore, the director found the applicant did not maintain continuous residence during the requisite period. Here, the director noted the regulation at 8 C.F.R. § 245a.2(h)(1)(i) which states in pertinent part that to be considered to have resided continuously in the United States no single absence from the United States can have exceeded 45 days and the aggregate of all absences cannot have exceeded 180 days during the requisite period. The director granted the applicant thirty (30) days within which to submit additional evidence in support of his application. In her Notice of Decision, dated September 21, 2006, the director noted that the applicant timely submitted additional evidence in support of his application. However, the director found that the applicant's submission was not sufficient to overcome her reasons for denial. Here, the director noted that though the applicant provided more precise dates associated with his absences, both his absence from April 27, 1984 until August 2, 1984 and his absence from February 25, 1988 until May 3, 1988 constituted absences that caused the applicant to fail to maintain continuous residence, as each of these single absences was for more than 45 days. Because the applicant did not maintain continuous residence during the requisite period, the director denied the application.

On appeal, the applicant states that the director miscalculated the number of days he was absent from the United States. He asserts that because the time he spent outside of the United States did not exceed a total of 180 days, his absences did not cause him to fail to maintain his continuous residence. However, here, it is noted that the applicant submitted a brief in which he showed that he was absent for a period of 96 days in 1984 and then a period of 67 days in 1988. Therefore, with his appeal he has stated that he had at least one or more absences during the requisite period that exceeded 45 days. The applicant therefore is found to have submitted evidence which supports the director's finding that he did not maintain continuous residence during the requisite period.

As stated in 8 C.F.R. § 103.3(a)(3)(iv), any appeal which is filed that fails to state the reason for appeal, or is patently frivolous, will be summarily dismissed.

A review of the decision reveals the director accurately set forth a legitimate basis for denial of the application. Though not noted by the director, it is noted here that the record also contains a Form

G-325A Biographic Information Form signed by the applicant on October 20, 1997. On this Form G-325A, the applicant showed that he resided continuously in Bombay, India from June 1984 until June 1996, further indicating that the applicant failed to maintain continuous residence in the United States during the requisite period. On appeal, the applicant has submitted a brief that supports the director's finding that he failed to maintain continuous residence in the United States during the requisite period. The appeal must therefore be summarily dismissed.

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