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U.S. Citizenship  
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FILE:



Office: NEW YORK

Date:

OCT 31 2008

MSC 05-216-11689

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 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's absence from the United States during 1983, 1984, 1985, and 1986 exceeded the 45-day period allowed for a single absence. 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, the applicant asserts that he has established continuous unlawful residence in the United States during the requisite period, and that each absence from the country was not in excess of 45 days.

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.

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.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 his Form I-687, Application for Status as a Temporary Resident, the applicant indicated that he has continuously resided in the United States since December 10, 1980. At part #32 where the applicant is instructed to list all absences from the United States, he indicated that he was absent from the United States from August of 1983 to October of 1983, from August of 1984 to October of 1984, from August of 1985 to October of 1985, and from August of 1986 to October of 1986. The applicant also stated under oath during his immigration interview on February 27, 2006 that he has been absent from the United States during the time periods listed above.

In denying the application, the director noted that based upon the applicant's absences from the United States, he had failed to meet his burden of proof to establish that he resided continuously in the United States for the requisite periods.

On appeal, the applicant states that he listed his specific travel dates in his affidavit submitted in response to the Notice of Intent to Deny, and that he is resubmitting the affidavit on appeal. In the affidavit the applicant indicates that he was absence from the United States from August 20, 1983 to October 2, 1983, from August 24, 1984 to October 3, 1984, from August 28, 1985 to October 8, 1985, and from August 25, 1986 to October 4, 1986.

In the instant case, the applicant has failed to overcome the director's denial. While the applicant asserts on appeal that he was absent from the United States on four separate occasions during the requisite period, and that each absence was for less than 45 days, he has failed to submit any independent documentary evidence to substantiate his claim. Therefore, it cannot be concluded that the applicant resided continuously in the United States for the requisite period. It is noted by the AAO that based upon the information contained in the record the applicant's aggregate number of days absent from the United States exceeded the statutory limit of 180 days, thus rendering him ineligible for the immigration benefit sought.

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). Based upon the applicant's prolonged absence, the AAO concludes that he 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.