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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE: MSC 05 342 12841

Office: LOS ANGELES

Date: JUN 02 2009

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. 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.

John F. Grissom
Acting 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 Director, Los Angeles. The decision is now before the Administrative Appeals Office 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, and a Form I-687 Supplement, CSS/Newman (LULAC) Class Membership Worksheet. The director denied the application because the applicant did not establish that he continuously resided in the United States for the duration of the requisite period. In so finding, the director noted that at his interview on November 16, 2006, the applicant verified that he had been deported and left the United States on October 2, 1985.

On appeal, counsel acknowledges that the applicant was removed from the United States but argues there were circumstances beyond the applicant's control. Counsel further states the applicant was not removed for any criminal related reasons, simply as a person in the United States without any lawful status, and therefore he continues to meet the necessary continuous residence requirements under the Act.

In removal proceedings held on September 26, 1985, an Immigration Judge in El Paso, Texas, ordered the applicant deported to Honduras. The record contains a Form I-205, Warrant of Deportation, issued by the District Director of the El Paso, Texas, office of United States Citizenship and Immigration Services, (formerly the Immigration and Naturalization Service), showing that he was deported from the United States on October 2, 1985. An alien shall not be considered to have resided continuously in the United States, if, during any period for which continuous residence is required, the alien was outside of the United States under an order of deportation. Section 245A(g)(2)(B)(i) of the Act, 8 U.S.C. 1255(g)(2)(b)(i). Consequently, the director's decision to deny the application is affirmed.

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 Act, 8 U.S.C. § 1255a(a)(2). It is noted that the record contains a Form I-213, Record of Deportable Alien, dated July 26, 1984, indicating that that an officer of the former Immigration and Naturalization Service (INS) apprehended the applicant near El Paso, Texas. At his interview with the INS officer, the applicant stated that he had last entered the United States on January 15, 1982 at the Los Angeles International Airport in California, using a "B-2" nonimmigrant visitor visa. Based on this evidence, it is determined that the applicant did not reside in the United States since before January 1, 1982 to January 15, 1982.

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. The applicant's asserted residential history on his Form I-687 is accompanied by inconsistent evidence because according to his own testimony, he did not enter the United States until January 15, 1982.

It is noted that on June 12, 1985, the applicant was convicted by a Judge of the Superior Court, of the County of Los Angeles, State of California, of disorderly conduct, a misdemeanor. ()
On April 15, 1996, the applicant was convicted by a Judge in the Municipal Court of the Los Angeles Judicial District of the County of Los Angeles, State of California, of inflicting corporal injury on a spouse, a misdemeanor. ().
Both convictions were under the name ().

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