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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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**U.S. Citizenship
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FILE: [REDACTED]
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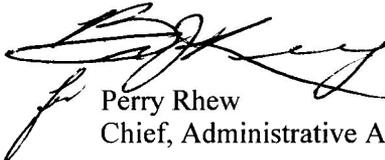
IN RE: Applicant: [REDACTED]

PETITION: 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 the matter 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.


Perry Rhew
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, New York, 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 (the Act), and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet. The director determined that the applicant had: 1) not established by a preponderance of the evidence that he had continuously resided in the United States in an unlawful status for the duration of the requisite period and 2) exceeded the forty-five (45) day limit for a single absence as well as the aggregate of 180 days total for all absences from the United States during the requisite period. The director denied the application, finding that the applicant had not met his 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 reiterates that he did not state, during the course of his interview, that he had been absent from the United States from 1984 to 1986. The applicant requests that the director reconsider his response to the Notice to Intent to Deny.

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).

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 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. Paragraph 11, page 6 of the CSS Settlement Agreement and paragraph 11, page 10 of the Newman Settlement Agreement.

An alien applying for adjustment of status has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, 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. *See* 8 C.F.R. § 245a.2(d)(5).

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 including affidavits is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L).

“*Continuous residence*” is defined in the regulation at 8 C.F.R. § 245a.2(6)(h)(1), as follows:

Continuous residence. An applicant shall be regarded as having resided continuously in the United States if, at the time of filing the application:

- (i) 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 for temporary resident status is filed, unless the alien can establish that due to *emergent reasons*, his or her return to the United States could not be accomplished within the time period allowed. [Emphasis added.]

The director’s determination that the applicant had been absent from the United States for over 45 days was based on the applicant’s sworn testimony taken under oath at the time of his interview at the New York office on May 10, 2006, in the presence of an officer of U.S. Citizenship and Immigration Services (USCIS). In his testimony, the applicant asserted that he departed the United States for Gambia from 1984 to 1986. The applicant also asserted that he was married in 1979 in Gambia, his wife had never visited the United States and that he had five children born in Gambia. The applicant asserted that he could only recall the dates of birth (1980 and 1985) for two of his children.

The record reflects that the applicant refused to sign the Record of Sworn Statement.

At the time he filed his Form I-687 application and at his interview, the applicant provided no documentation to establish continuous residence and physical presence in the United States during the requisite period.

On December 12, 2007, the applicant was advised in writing of the director's intent to deny the application based on his prolonged absence from the United States as well as his failure to furnish documentation to support his claim of continuous residence during the required period.

Regarding the lack of supporting documentation, the applicant asserted, in pertinent part:

I also understand that the service maintains that I did not provide sufficient evidence to substantiate my continuous presence in the United States during the statutory

period. However, during my interview my testimony underscored my assertion that my initial entry into the United States was without inspection and my residence was also continuous during the statutory period of from January 1, 1982 to May 4, 1988.

Simply 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)).

The absence of credible and probative documentation to corroborate the applicant's claim of continuous residence during the requisite period seriously detracts from the credibility of his claim. Therefore, based upon the foregoing, the applicant has failed to establish by a preponderance of the evidence that he has continuously resided in an unlawful status in the United States for the requisite period. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis.

In regards to his absence, the applicant, in response, asserted, in pertinent part:

This assertion is mere conjecture because I never stated during my interview that was the reason I refused to sign the sworn statements given to me by interview officer. The Service's contention that my first entry is 1989 is based on nothing more than mere surmise. As I have always maintained, my first entry into the United States was in 1981.

The record reflects that on June 4, 1992, a Form I-130, Petition for Alien Relative, was filed on behalf of the applicant by his current spouse.¹ Accompanying the Form I-130 is a Form I-485 application and a Form G-325A, Biographic Information, signed by the applicant on June 3, 1992. The applicant indicated on his Form G-325A that he resided in his native country, Gambia until November 1990. The Form G-325A also requests the applicant to list his residence and employment in the United States for the last five years. The applicant listed his residence and employment in the United States commencing 1990 and 1991, respectively.

The Form G-325A undermines the credibility of the applicant's claim to have continuously resided in the United States during the period in question and, therefore, it is concluded that he has failed to establish continuous residence in an unlawful status from prior to January 1, 1982, through May 4, 1988, as required. The record also reflects that the applicant did not claim any residence during the requisite period on his Form I-687 application.

Assuming, arguendo, the applicant was present in the United States during the requisite period, his continued stay in Gambia from 1984 to 1986 would appear to have been a matter of personal choice, not a situation that was forced upon him by unexpected events. The extended absence

¹ The applicant's marriage occurred on June 3, 1992 in New York City. The Form I-130 was denied on November 8, 1993.

from the United States – far beyond the 45 days allowed by 8 C.F.R. § 245a.15(c)(1) – was not “due to emergent reasons” outside of his control that prevented him from returning far sooner. As such the 1984 to 1986 departure from the United States exceeded the 45-day period allowable for a single absence, as well as the 180-day aggregate total for all absences, and interrupted his “continuous residence” in the United States.

Moreover, section 101(a)(33) of the Immigration and Nationality Act defines the term "residence" as "the place of general abode; the place of general abode of a person means his principal, actual dwelling place, in fact, without regard to intent." The applicant has provided no evidence that he maintained any "principal, actual dwelling place" in the United States during the requisite period. Whether or not the applicant's departure from the United States to Gambia was voluntary, his actual dwelling place during the period in question was out of the United States intent notwithstanding.

An alien applying for adjustment of status has the burden of proving by a preponderance of evidence that he 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). The applicant has failed to met this burden. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternative basis for dismissal.

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