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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**

**PUBLIC COPY**

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[REDACTED]

FILE:

[REDACTED]

Office: HOUSTON

Date:

**OCT 23 2009**

[REDACTED] consolidated herein]

MSC 06 098 19491

[MSC 07 349 10062 – Appeal]

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. The file has been returned to the National Benefits Center. 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, Houston, Texas. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant submitted an initial Form I-687, Application for Status as a Temporary Resident Under Section 245 A of the Immigration and Nationality Act, in December 1990, and filed the current Form I-687 on January 6, 2006.

The director denied the current application on August 13, 2007, because the applicant failed to establish he had continuously resided in the United States in an unlawful status throughout the requisite time period.

The applicant filed an appeal from the director's decision on September 13, 2007. On appeal, the applicant submits a brief and additional documentation

An applicant for temporary residence 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).

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.1(c).

An alien must also establish continuous physical presence in the United States since November 6, 1986. Section 245A(a)(3)(A) of the Act. However, such alien shall not be considered to have failed to maintain continuous physical presence by virtue of brief, casual and innocent absences. Section 245A(a)(3)(B) of the Act.

The AAO maintains plenary power to review this matter on a de novo basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); see also, *Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The federal courts have long recognized the AAO's de novo review authority. See, e.g. *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The applicant claims to have initially entered the United States without inspection in October 1981, and to have departed the United States to Colombia on three occasions: from April to May 1985 - at which time he re-entered the United States as a nonimmigrant visitor for pleasure; from November to December 1987 - at which time he re-entered the United States without inspection; and from July 1988 to November 1988 - at which time he again entered without inspection.

The applicant's absence from the United States from July 1988 to November 1988 - a period of approximately 4 months - exceeds the 45-day period allowed for a single absence. Therefore, it must be determined if his untimely return 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."

The applicant has provided no information regarding the reason(s) for his extended absence. In the absence of clear evidence that the applicant intended to return within 45 days, it cannot be concluded that an emergent reason "which came suddenly into being" delayed the applicant's return to the United States beyond the 45-day period. Furthermore, an absence of such length cannot be characterized as "brief." Therefore, the applicant also cannot be found to have met the standard of continuous physical presence, which permits only "brief, casual and innocent" absences.

Although the applicant claims to have initially entered the United States in 1981, the record reflects that on an application for an immigrant visa filed by the applicant in 1988, he indicated that he had resided in Colombia from 1979 to 1985 and entered the United States in May 1985 as a nonimmigrant visitor for pleasure. Furthermore, on a Form I-130, Petition for Alien Resident, the applicant's spouse indicated that the applicant had entered the United States in November 1985.

These discrepancies in the applicant's submissions cast doubt on the credibility of his claims. Doubt cast on any aspect of the evidence as submitted may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. Further, it is incumbent on the applicant to resolve any inconsistencies in the record by independent objective evidence; any attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582. (Comm. 1988).

In summary, for the time period from prior to January 1, 1982, through 1985, the applicant provided no employment letters that comply with the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(i)(A) through (F), no utility bills according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(ii), no school records according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(iii), no hospital or medical records according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(iv), and no attestations from churches, unions, or other organizations that comply with the regulation at 8 C.F.R. § 245a.2(d)(3)(v). The applicant also has not provided documentation (including, for example, money order receipts, passport entries, children's birth

certificates, bank book transactions, letters of correspondence, a Social Security card, automobile, contract, and insurance documentation, deeds or mortgage contracts, tax receipts, or insurance policies) according to the guidelines set forth in 8 C.F.R. § 245a.2(d)(3)(vi)(A) through (K).

The documentation provided by the applicant for the period prior to January 1, 1982, through 1985 consists solely of third-party affidavits (“other relevant documentation”) from acquaintances (including [REDACTED] and [REDACTED]). Generally, these fill-in-the-blank documents lack specific details as to how often and under what circumstances the affiants had contact with the applicant throughout the time period from prior to 1982 through 1985.

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).

Given the paucity of the documentation presented and the discrepancies noted, it is concluded that the applicant has failed to establish, by a preponderance of the evidence, his continuous residence in an unlawful status in the United States from prior to January 1, 1982, through the date he attempted to file a Form I-687 application as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E-M-*, *supra*. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis.

As always in these proceedings, the burden of proof rests solely with the applicant. Section 245a.2(d)(5) of the Act.

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