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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: [REDACTED]  
MSC 07 139 10953

Office: NEWARK

Date: **FEB 02 2010**

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 J. 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, or *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, Newark, New Jersey, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The district director denied the application because the applicant had been deported from the United States on August 14, 1986 and, therefore, had not continuously resided in this country from January 1, 1982 through May 4, 1988.

On appeal, the applicant admits that he was deported from the United States. However, the applicant states that after he was deported in August 1986, he re-entered the United States in January 1987, and he has since resided here. Also, the applicant asks reconsideration because he has three U.S. citizen children, and his wife and stepchild are permanent residents. The applicant does not submit additional evidence on appeal.

An applicant for permanent 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 May 4, 1988. 8 C.F.R. § 245a.11(b). Such an applicant shall be regarded as having resided continuously in the United States provided the applicant did not depart the country based upon an order of deportation. 8 C.F.R. § 245a.15(c)(3).

A review of the record reveals that the applicant was deported to Colombia, on August 14, 1986, and, therefore, did not maintain continuous residence for the required period.

Approval of a waiver of inadmissibility under section 212(a)(9)(A) or section 212(a)(9)(C) of the Immigration and Nationality Act (INA) does not cure a break in continuous residence resulting from a departure from the United States at any time during the period from January 1, 1982, and May 4, 1988, if the alien was subject to a final exclusion or deportation order at the time of the departure. 8 C.F.R. § 245a.18(c)(1). Relief is provided within the LIFE Act for absences based on factors other than deportation, namely absences due to emergencies and absences approved under the advance parole provisions. Clearly, regarding maintenance of continuous residence, it was not congressional intent to provide relief for absences under an order of deportation.

Even if the applicant was only absent from the country for a short period of time and he returned to the United States after he had been deported, the fact that applicant returned to this country after being deported has no affect on the finding that he did not continuously reside in the United States for the requisite period as a result of his deportation.

An alien applying for adjustment of status under the provisions of section 1140 of the LIFE Act 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 January 1, 1982 to May 4, 1988, is admissible to the United States under the provisions of section 212(a) of the INA, and is otherwise eligible for adjustment of

status. 8 C.F.R. § 245a.11. The applicant was deported on August 14, 1986, and therefore did not maintain continuous residence. The applicant has failed to meet this burden.

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