



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: JUN 23 2015

FILE: [REDACTED]
APPLICATION RECEIPT: [REDACTED]

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:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If your appeal was dismissed or rejected, 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.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
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 Field Office Director, Houston, Texas, 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. On August 13, 2013, 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. This decision was based on the director's determination that the applicant had exceeded the 45-day limit for a single absence and the aggregate of all absences of 180 days from the United States during the requisite period.

On appeal, the applicant, through counsel, asserts that he remained in Mexico from May 1986 to May 1987 to assist his parents while his father was gravely ill. Citing 8 C.F.R. § 245a .15(c)(1), counsel states that the applicant has presented a letter from his father's doctor establishing the emergent reason for his extended stay in Mexico.

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). An 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.

For purposes of establishing residence and physical presence under the CSS/Newman Settlement Agreements, the term "until the date of filing" in 8 C.F.R. § 245a.2(b)(1) means until the date the applicant attempted to file a completed Form I-687 application and fee or was caused not to timely file during the original legalization application period of May 5, 1987 to May 4, 1988. CSS Settlement Agreement, paragraph 11 at page 6; Newman Settlement Agreement, paragraph 11 at page 10.

"*Continuous residence*" is defined in the regulation at 8 C.F.R. § 245a.2(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:

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.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

The record reflects that the applicant listed on his Form I-687 applications several departures from the United States, including a departure to Mexico from May 1986 to May 1987. Specifically, on his initial Form I-687 application filed in October 1990, the applicant listed the purpose for his trip to Mexico as “visit Relative (wife)”. On his current Form I-687 application filed in March 2005, the applicant listed the purpose for his trip to Mexico as “visit [his] family.” At his interview on May 20, 2013, the applicant admitted, under oath, in a signed sworn statement that he went to Mexico to visit his family, that neither he nor his family was ill, and that he “just wanted to stay with [his] family.”

On May 20, 2013, a notice was issued advising the applicant of the director's intent to terminate his temporary resident status due to his year-long absence from the United States. The applicant was advised of his sworn statement taken on May 20, 2013, and that based on his absence from the United States from May 1986 to May 1987, he had not established continuous residence in the United States.

The applicant, in response, submitted an affidavit indicating, “I declared that most of my visits to Mexico between 1982 and 2006, were only due to a significant cause, it was mostly to visit a very sick family member that required to my assistance and care.” The applicant requested additional time to submit evidence regarding his visits to Mexico.

In his decision, the director noted that the applicant's request for additional time would not be granted.¹ The director determined that the applicant had not submitted evidence to support his statement. Accordingly, the director terminated the applicant's temporary resident status, as the applicant had exceeded the 45-day limit for a single absence as well as the aggregate of 180 days from the United States during the requisite period.

On appeal, the applicant, through counsel, presents a letter from Dr. [REDACTED] an internal medicine specialist, in Mexico, who indicates that the applicant's father was his patient, that the applicant was in Mexico from April 1986 to May 1987 to care for his father, who “suffered from a chronic heart failure and chronic obstructive pulmolar [sic]disease,” and that the applicant's father died on February 24, 1998, as a result of these medical conditions.

¹The regulation at 8 C.F.R. § 103.2(b)(8)(iv) specifies the maximum time afforded to an applicant to respond to a notice of intent to deny is 30 days.

The applicant has offered a different statement to explain his trip from May 1986 to May 1987, claiming now that he was in Mexico to care for his ailing father. The applicant offers no explanation, however, for revising his explanation. The applicant submits his revised statement after learning that his temporary resident status was going to be terminated due to failure to establish continuous residence in the United States. An inference cannot be drawn that the information or documentation submitted is accurate solely because the applicant recants his admission.

It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Although emergent reason is not defined in the regulations, *Matter of C-*, 19 I. & N. Dec. 808 (Comm. 1988) holds that *emergent* means “coming unexpectedly into being.” In other words, the reason must be unexpected at the time of departure from the United States and of sufficient magnitude that it made the applicant’s return to the United States more than inconvenient, but virtually impossible. Moreover, this absence was not due to any “emergent reason” – *i.e.*, one that was unforeseen at the time of his departure – because visiting his family in Mexico was the specific reason for the applicant’s absence from the United States. In the alternative, even if the specific reason for the applicant’s absence from the United States was to visit his ailing father, the absence was not due to any “emergent reason” – *i.e.*, one that was unforeseen at the time of his departure. Except for the letter from Dr. [REDACTED] the applicant does not provide independent, corroborative, contemporaneous evidence to support the events that occurred while in Mexico. However commendable the applicant’s decision may have been to stay with his father, his extended absence from the United States – far beyond the 45 days allowed by 8 C.F.R. § 245a.2(h)(1)(i) – was not “due to emergent reasons” outside of his control that prevented him from returning sooner. The record does not establish that the applicant’s prolonged absence was caused by a situation involving unexpected events that was forced upon him.

The applicant’s stay in Mexico from May 1986 to May 1987 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. Therefore, the applicant has failed to establish that he resided in the United States in a continuous unlawful status from before January 1, 1982 through the date he attempted to file his application. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis.

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