



U.S. Citizenship
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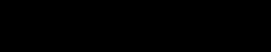


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FILE: 

Office: California Service Center

Date: **NOV 02 2005**

IN RE: Applicant: 

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: 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 your case 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application for temporary resident status was denied by the Director, Western Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director noted that the applicant had been absent from the United States for over two years, and had failed to establish that she maintained a residence here while absent. The director therefore concluded that the applicant had not resided continuously in the United States, and denied the application.

On appeal the applicant explains that, due to her mother's medical emergency in Mexico, she had to go there to take care of her. She states that, after arriving there, she was told that someone needed to take care of her mother for a long time.

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).

On her Application for Status as a Temporary Resident (Form I-687), the applicant claimed that she continuously resided in the United States since July 1975. She indicated that she was in Mexico to take care of her seriously ill mother from June 1984 to July 1985. However, at her later interview with an officer of the Immigration and Naturalization Service regarding this application, the applicant indicated that she was absent from the United States from June 8, 1983 to February 6, 1985.

The applicant's absence exceeded the 45-day period allowed for a single absence. Therefore, it must be determined if the untimely return of the applicant 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."

A letter from the physician in Mexico explains that the applicant's mother was incapacitated due to a vascular cerebral accident. The applicant states that she left the United States in order to care for her mother. There was certainly a valid basis for the applicant's departure from the United States. However, the explanation put forth by the applicant leads to a conclusion that she actually intended to remain outside of the United States for as long as it took her to complete the purpose of her trip, that is, for an indefinite period. Evidence that the applicant realized that the absence would be for a long period is the fact that she had her United States citizen children go to Mexico and enroll in school there, as there was no one to care for them in the United States. 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. Therefore, it cannot be concluded that she resided continuously in the United States for the requisite period.

As explained by the director, the term "residence" means 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. Section 101(a)(33) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(33). The very lengthy absence does raise serious questions as to whether the applicant was maintaining residence in the United States as required by 8 C.F.R. § 245a.2(h)(ii).

Contemporaneous evidence demonstrates that when the applicant entered the United States in 1985, she did not return to her previous address or employment. She was not actually returning to an unrelinquished residence, but rather was making another move to the United States. Therefore, it cannot be concluded that the applicant maintained continuous residence in the United States on this basis as well.

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). The applicant has failed to meet this burden.

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