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FILE:



Office: California Service Center

Date: **OCT 21 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 45 days, and had failed to establish that an emergent reason had delayed her return. The director therefore concluded that the applicant had not resided continuously in the United States, and denied the application.

On appeal, the applicant asserts she was not absent for over 45 days. She states she was absent briefly in March 1982, and then again in November 1982.

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 Form I-687 Application for Status as a Temporary Resident, the applicant indicated she first entered the United States in 1981, and continuously resided in the United States without absence since then. She was then interviewed by an officer of the Immigration and Naturalization Service regarding this application. According to the notes of the officer, the applicant stated she was absent from the United States from March 1982 to November 1982 to bring her family into the United States.

The director then sent a notice to the applicant, in which he asked her to explain the reason for her absence, and whether any emergency delayed her return to the United States. The applicant responded by stating that she was not absent from March to November. She claimed she was absent for 15 days in March to bring her daughter to the United States, and for 14 days in November to attend to her sick mother. She provided a letter from a doctor attesting to her mother's painful condition, which began on November 10, and treatment. The director determined that the applicant's revised claim as to her absence was not credible, and concluded that she was absent for the entire March-November period. As that period far exceeded the 45 days allowed, the director found that the applicant had not resided continuously in the United States, and denied the application.

There is no evidence in the record demonstrating when the applicant left the United States and returned. The applicant did provide evidence of her mother's medical treatment, but that evidence does not help establish whether she was briefly absent twice, or once for an eight-month period. After receiving a notice asking her to provide details regarding her long, potentially disqualifying absence, the applicant responded by stating that she was not absent for a long period, and that the interviewing officer must have misunderstood her.

However, no corroborative statements have been provided from other individuals who might have known how long she was absent.

It is reiterated that, on her application, the applicant showed "none" for absences. She does not explain why that information was provided on the application if it were not true. It is incumbent upon the petitioner or 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 applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The applicant has not even provided an explanation regarding this point, much less evidence. Thus, her credibility regarding this entire issue must be viewed as suspect.

Given the altered claim, and the lack of evidence and explanation, it is concluded that the applicant was absent for the eight-month period as noted by the interviewing officer.

The applicant's absence exceeded the 45-day period allowed for a single absence. Therefore, it would normally be necessary to determine if the untimely return of the applicant to the United States was due to an "emergent reason." However, because the applicant maintains that she was absent for very short periods, she does not claim that an emergent reason, even her mother's illness, *delayed her return beyond a 45-day period*. Because the applicant was absent for eight months, and no emergent reason delayed her return, it cannot be concluded that she maintained continuous residence in the United States for the requisite period.

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.