



U.S. Citizenship
and Immigration
Services

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FILE:



Office: California Service Center

Date: OCT 25 2005

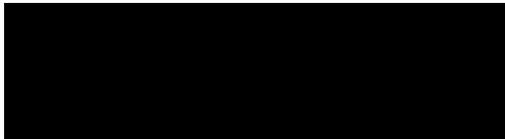
IN RE:

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:



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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

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

The Director, California Service Center 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. The director also noted discrepancies in what the applicant had claimed on two applications of the same type.

On appeal, counsel contends that the applicant expected to return to the United States within 45 days, but the *unexpected* treatment she received in Thailand delayed her return. He also addresses the discrepancies.

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 first entered the United States in 1980, and that she continuously resided in the United States since then. She indicated on the application that she was in Thailand from September 16, 1984 until January 24, 1985 because of surgery. The applicant later provided a corroborative statement from her doctor in Bangkok, and her own statement, in which she indicated that the reason for her absence was to prepare for, and undergo, brain surgery. She explained that she underwent a lot of tests prior to the surgery, and then had many follow up visits with her doctor for almost 15 weeks. She further explained that she went to Thailand for treatment because of the exorbitant cost in the United States for those such as her who were uninsured.

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."

Clearly, there was a valid basis for the applicant's departure from the United States. However, the explanation put forth by the applicant on her application and in her follow up statement leads to a conclusion

that she 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. The applicant could have reasonably anticipated that an absence for such an critical purpose would have likely been an extended one.

On appeal, counsel maintains that the applicant intended to return to the United States within 45 days, but that unexpected treatment delayed her return. The applicant states that when she left the United States, she did not know the seriousness of her condition. However, on her application, the applicant had indicated that the purpose of her trip to Thailand was to "see doctor for surgery." This raises questions as to the claim on appeal that she intended to go to Thailand for a brief period of less than 45 days.

Other aspects of this matter raise questions of credibility. On her application, the applicant only showed the one absence. Yet, an Immigration and Naturalization Service computerized printout in the record shows that the applicant entered the United States on June 19, 1986 as a visitor intent on visiting Hawaii. It also shows that her visitor visa was issued on December 20, 1984 in Bangkok, which correlates with her claimed absence from September 1984 to January 1985. Thus, it appears the applicant either returned from her one stated absence on June 19, 1986, which would mean she was actually absent for about 21 months, or she had another undisclosed absence of unknown length.

Furthermore, on the second legalization filed by the applicant, for class membership in the *Catholic Social Services* lawsuit, the applicant showed only one absence, but in 1987. She disavows the filing of this application, but it serves to raise even more questions regarding credibility.

Regarding the absence that began in September 1984, the applicant's explanation that she intended to return to the United States within 45 days cannot be considered plausible. Therefore, 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.

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.