



U.S. Citizenship
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Services

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[REDACTED]

FILE: [REDACTED]
XNK-88-512-0073

Office: California Service Center

Date: MAY 23 2006

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: 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.

Mari Johnson

→ Robert P. Wiemann, Chief
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 his return. The director therefore concluded that the applicant had not resided continuously in the United States, and denied the application.

On appeal, the applicant states: "I left the country in 1986 for only 30 days because my wife was very ill."

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).

If the applicant's absence exceeded the 45-day period allowed for a single absence, 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."

On his Application for Status as a Temporary Resident (Form I-687) the applicant claimed that he established a residence in the United States in 1978, and that he continuously resided in the United States since then. In block 35, where absences from the United States were to be listed, he showed "none". However, according to the notes of the legalization officer who later interviewed him, the applicant stated that he was absent for three months in 1985, and two months in 1986, due to an emergency.

Subsequently, the director sent a notice to the applicant that asked him to submit a detailed explanation of the reason for his prolonged absence. In response, the applicant furnished a letter from a doctor in Mexico attesting to the fact that he had treated the applicant's wife for diabetes mellitus, bronchitis and other serious conditions from October 2, 1985 to March 3, 1986. The director then denied the application, finding that the absence was not prolonged due to an emergency because the applicant knew at the outset that he would be staying in Mexico for an extended period in order to help care for his wife.

On appeal, the applicant states: "I left the country in 1986 for only 30 days because my wife was very ill." He furnishes another letter from the same doctor, dated June 20, 1986, which states that he had been treating the applicant's wife for brucellosis, which was first detected by laboratory tests on April 1, 1986, and that she needed her husband to be with her.

From the applicant's brief statement on appeal it is not clear if he is stating that he had only one absence of 30 days in 1986 and no other absences. If that is his claim, he offers no explanation as to why he is providing different information than was provided earlier. Furthermore, he submits no evidence to establish that he was indeed in the United States for most of the five-month period in question. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998), citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

In the absence of any other information, it is concluded that the applicant was absent for five months, as he evidently stated to the interviewing officer and as the original letter from the doctor seemed to indicate. As the applicant's absence exceeded the 45-day period allowed for a single absence, it must be determined if the untimely return of the applicant to the United States was due to an "emergent reason."

The applicant has explained that he left the United States in order to care for his spouse, which 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 he intended to remain outside of the United States for as long as it took him to complete the purpose of his trip, that is, for an indefinite period. The applicant could have reasonably anticipated that an absence for such a purpose would have likely been an extended one. 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 he 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). Due to the absence, the applicant did not continuously reside in the United States for the requisite period.

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