

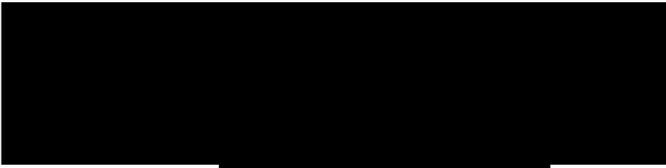
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U.S. Citizenship
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Services

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JUN 22 2007

FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER
XSA 88 021 5037

Date:

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for temporary resident status was denied by the Director, California Service Center. The matter subsequently came before the Administrative Appeals Office (AAO) on appeal and was remanded pending further litigation of *Proyecto San Pablo v. Immigration and Naturalization Service*, 784 F. Supp. 738 (D. Ariz. 1991). The matter is back before the AAO on appeal. The appeal will be dismissed.

Upon further review of the record, it appears that the applicant was not deported as suggested by the AAO's prior decision. The director previously denied the petition based on the determination that the applicant was absent from the United States for an extended period of time, which interrupted her continuous residence after January 1, 1982.

On appeal, the applicant disputes the director's decision, claiming that her absence did not last for the time period cited in the director's decision. Additional school records were provided in support of the applicant's claim.

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 her Form I-687 the applicant claimed that she established a residence in the United States in 1979, but indicated in item 35 of the application that she went to and remained in Mexico from 1985 to 1986. She claimed that vacation and school were the reasons for her departure. The applicant also submitted a copy of her school records, which show that on September 23, 1985, she entered Mann School, where she attended first grade for 156 days and that on September 18, 1987, she entered Cleveland School, where she attended third grade.

Subsequently, in a request for additional evidence (RFE), the director sent a notice dated July 14, 1988 asking the applicant to submit the specific dates and a detailed explanation of the reason for her prolonged absence from 1985 to 1986. The applicant's response included a letter dated July 18, 1990 from her father, who stated that he left his two daughters, one of whom was the applicant, in Mexico from 1986 to 1987 to care for their grandfather who was suffering from poor health. The applicant submitted an additional letter with a

translation dated July 18, 1990 from her grandfather's treating physician who stated that the applicant's grandfather was treated at the Instituto Mexicano Del Seguro Social for cerebral vascular complications. No explanation was provided for the absence indicated in the applicant's Form I-687 where she indicated that she departed the United States in 1985 and reentered in 1986.

In a decision dated September 11, 1991, the director denied the application, finding that the applicant's school records showed a total absence period of two years. The director concluded that the applicant's prolonged absence indicates that she relinquished her continuous residence in the United States.

On appeal, the applicant submits a statement explaining that she was not absent from the United States or from school during all of 1985. Further review of the applicant's school record, which she submits with additional information, suggests that the applicant's claim is valid. The record clearly shows that the applicant commenced the 1985/1986 school year at the Mann School in the United States. While the exact date of the applicant's departure is unclear, it is clear that she was not absent during all of 1985. However, the record clearly shows that the applicant did not commence her second grade year, which would have started in September of 1986, in the United States. Thus, based on the evidence submitted, the applicant appears to have been absent from the United States during the 1986/1987 school year and only returned to commence the 1987/1988 school year in the United States.

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 and has submitted documentation suggesting that she left the United States in order to care for her ailing grandfather. However, the explanation put forth by the applicant leads to a conclusion that her father intended for her to remain outside of the United States for as long as necessary to care for her grandfather, or for an indefinite period. 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.

An applicant 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 her 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.