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U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED]  
XPW 90 135 2151

Office: CALIFORNIA SERVICE CENTER

Date: OCT 26 2007

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Adjustment from Temporary to Permanent Resident Status under 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. Wiermann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application for adjustment from temporary to permanent resident status was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director noted that the applicant had resided outside of the United States for nine years, and thus over 90 days in the aggregate, after his application for temporary resident status had been approved. The director further determined that the applicant's absence was not the result of an emergent reason. Based on these findings, the director determined that the applicant was ineligible for adjustment of status to that of a permanent resident and denied the application.

On appeal, the applicant disputes the director's finding regarding the reason for his absence and provides an additional statement discussing the claimed emergent events that resulted in his prolonged absence.

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 for the purpose of this part if, at the time of applying for adjustment from temporary to permanent resident status, or as of the date of eligibility for permanent residence, whichever is later, no single absence from the United States has exceeded thirty (30) days, and the aggregate of all absences has not exceeded ninety (90) days between the date of approval of the temporary resident application, Form I-687, and the date the alien applied or became eligible for permanent resident status, whichever is later, unless the alien can establish that due to emergent reasons or circumstances beyond his control, the return to the United States could not be accomplished within the time period(s) allowed. 8 C.F.R. § 245a.3(b)(2). Although "emergent reason" 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 1979, and that he continuously resided in the United States up through the date the application was approved. However, on May 2, 2007 at an interview with a Citizenship and Immigration Services (CIS) officer with regard to his permanent residence application, Form I-698, the applicant stated that he departed the United States in 1991 and did not return to the United States until August 28, 2000. The applicant claimed that he left the United States to care for his sick brother and parents and only returned to the United States after the death of his mother.

Upon review of this information, the director sent a notice dated June 8, 2007 advising the applicant that his prolonged absence interrupted his continuous residence rendering him ineligible to adjust his status to that of a permanent resident. The applicant was advised of the regulatory requirements cited in 8 C.F.R. § 245a.3(b)(2) and allowed the applicant 30 days in which to respond to the adverse information cited in the notice of intent to deny.

In response, the applicant explained in a letter that his brother and parents had no one else to help them and that he had no choice but to return to his home country to take care of his family. Based on the sequence of events provided by the applicant, it appears that the primary reason for his return was to take care of his father, whose health deteriorated causing him to be unable to care for the applicant's brother.

In a decision dated August 3, 2007, the director denied the application, finding that the absence was not prolonged due to emergent reasons or circumstances beyond his control.

On appeal, the applicant submits another statement explaining the basis for his prolonged absence and asserting that such absence falls within the parameters of what is considered an emergent reason. The applicant explains that the initial reason for his return to Mexico was to take over the care of his father, whose condition had worsened unexpectedly, and his brother, who got sick and died while the applicant was already in Mexico. Thus, in the applicant's own words, he left the United States in order to care for his father who he knew was ill prior to the departure from the United States. Thus, while the applicant certainly had a valid basis for departing, the explanation put forth 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 30 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 30-day period. Based on the applicant's prolonged absence, it cannot be concluded that he resided continuously in the United States for the requisite period. Therefore, he is ineligible for permanent residence in the legalization program.

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