



U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: California Service Center

Date:

SEP 28 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 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 reiterates his claim to have not been absent from the United States for a lengthy period.

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 his Application for Status as a Temporary Resident (Form I-687) the applicant claimed that he established a residence in the United States in 1980, and that he continuously resided in the United States since then. However, the applicant also indicated that he went to Guatemala in 1983, and was there from April 20 to October 20. While other dates were apparently first entered in that block on the application, it appears the applicant or the preparer he retained used the same pen to write, in blue ink, the April 20 and October 20 dates. Those dates do not appear to have been written in by the officer of the Immigration and Naturalization Service who interviewed the applicant, as that officer used red and black ink to check off items and make small notes on the application. At the conclusion of the interview, the officer noted that the applicant was out of the United States from April 20, 1983 to October 20, 1983.

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, an immigration counselor stated in a letter that the applicant had no prolonged absence. She also submitted a photocopy of a statement that had already been submitted from the applicant's former employer [REDACTED] indicating he employed the applicant from January 1980 to December 1983.

The director wrote to the applicant again, and asked him to explain the discrepancy between the information on the application and the information in the counselor's letter. However, the director's letter was sent to an outdated address, and was apparently not forwarded to the correct address. The director then denied the application, finding that the applicant's revised claim of having no prolonged absence was not credible. The director noted that no known emergent reason had delayed the applicant's return to the United States.

On appeal, the applicant states that he had no prolonged absences, and that he never admitted to anyone in the interview that he had been out of the United States for six months. He provides the following supporting documentation:

1. An affidavit from [REDACTED] stating the applicant was employed by him from January 1980 to December 1983 on a continuing basis. He explains that in his earlier letter, he used the term "contract employer," but that referred to contracts with customers, and did not mean that the applicant simply contracted with him.
2. An affidavit from [REDACTED] stating that the applicant resided in property that he rented from M [REDACTED] from April 1, 1983 to November 30, 1988. This correlated with information previously supplied by M [REDACTED]

The applicant has submitted evidence that suggests that he resided and worked in the United States during the period in question. Additionally, both the applicant and the counselor have stated that he had no "prolonged" absence from the United States. However, it is not clear if they are stating that he *was* absent, but not for a prolonged period, or what. If he was not absent at all, it is not known why the applicant and the consultant would not have clearly stated that.

The applicant explains that he is attaching the affidavits from [REDACTED] and [REDACTED] which state that I have been here in this country since my arrival in 1980." The question is not whether he has resided here since 1980, but whether he was absent, how long he was absent, and whether an emergent reason delayed his return. It is noted that the statements from [REDACTED] and [REDACTED] refer to residence and employment, but do not indicate whether the applicant was absent. None of the parties has stated that the applicant was not absent in 1983. Because of that, and the information on the application, it is concluded that he was absent. Furthermore, he has not claimed that an emergent reason delayed his return to the United States. The determination that remains is the length of the absence.

After indicating on the application that he was absent for six months, the applicant and counselor have simply indicated that he was not absent for a prolonged period. Neither has stated exactly how long he was absent, or what length of time would constitute a "prolonged period." The applicant has revised his claim, without providing specific information as to what exactly his new claim is. In view of this, it is concluded that the information on his application, indicating that he was absent for six months, is correct.

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.