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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529 - 2090



U.S. Citizenship  
and Immigration  
Services

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FILE:



MSC-05-060-11256

Office: LOS ANGELES

Date: **MAR 25 2010**

IN RE:

Applicant:



APPLICATION:

Application for Temporary Resident Status under 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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

*Perry Rhew*

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The applicant's status as a temporary resident was terminated by the Director, Los Angeles. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant was granted lawful temporary residence on July 14, 2005. On June 25, 2007, the applicant filed Form I-698, Application to Adjust Status from Temporary to Permanent Resident. A review of the file revealed that the applicant had left the United States on August 10, 1987 and returned to the United States on October 15, 1987. The director determined that the applicant presented no evidence to demonstrate that she was unable to return to the United States due to an emergent reason. Therefore, on March 5, 2008, the director issued a Notice of Intent to Terminate (NOIT) and granted the applicant 30 days in which to submit evidence to overcome the reasons for the denial. In response to the NOIT, counsel submitted a declaration from the applicant explaining her father's stroke and political unrest in Fiji prevented her return to the United States until October 15, 1987. The applicant provided a letter from her father's physician and copies of newspaper articles concerning the political unrest as proof of the delay in her departure. The director found that the evidence failed to establish that due to emergent reasons, the applicant's return to the United States could not be accomplished. The director denied the application, finding that the applicant disrupted any period of required continuous residence.

On appeal, counsel asserts that the applicant's prolonged absence from the United States in 1987 was due to emergent circumstances as her father suffered a stroke while she was in Fiji and the political situation in Fiji deteriorated during her visit. The applicant submitted additional evidence on appeal. The AAO has considered the applicant's assertions, reviewed all of the evidence, and has made a *de novo* decision based on the record and the AAO's assessment of the credibility, relevance and probative value of the evidence.<sup>1</sup>

An applicant shall be regarded as having resided continuously in the United States if, at the time of filing the application for temporary resident status, no single absence from the United States has exceeded 45 days, and the aggregate of all absences has not exceeded 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)(1)(i).

In her response to the director's NOID, the applicant states that she left the United States on August 10, 1987 to see her sick father. Although the director notes that the applicant's initial

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<sup>1</sup> The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9<sup>th</sup> Cir. 1991). The AAO's *de novo* authority has long been recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n.9 (2d Cir. 1989).

Form I-687 states that her absence from the United States was to visit family, the AAO finds no conflict between the applicant's current statement and the Form I-687.

The director also states that the applicant provided contradictory statements regarding her reason for being outside the United States in excess of 45 days. In her declaration dated November 16, 2001 submitted with the Form I-485 LIFE application, the applicant stated that she left the United States with the intention of returning in a month but because of the second coup in Fiji in October, 1987, she was unable to make reservations and return to the United States. The applicant repeats in her statement dated April 3, 2008, that her plan was to return in one month but her father had a stroke and was subsequently hospitalized for three weeks. By the end of the second week, the applicant claimed that her father's condition stabilized and she asked her travel agent to book her return flight to the United States. However, due to the political unrest that escalated into the second coup on September 25, 1987<sup>2</sup>, the applicant was not able to return home until October 15, 1987. The director states that these statements are contradictory regarding her reason for being outside the United States. The AAO disagrees. The record reflects that the applicant's father's medical condition and the political situation in Fiji deteriorated after the applicant's arrival..

"Emergent reasons" is defined as "coming unexpectedly into being." *Matter of C*, 19 I&N Dec. 808 (Comm. 1988). The evidence of record establishes that her absence from the United States was due to emergent reasons. Therefore, the applicant has not disrupted the period of continuous residence in the United States during the statutory period of January 1, 1982 to May 4, 1988.

The applicant has not disrupted her period of required continuous residence in the United States during the statutory period of November 6, 1986 to May 4, 1988. Consequently, the applicant has overcome the basis of denial cited by the director.

The appeal will be sustained. The director shall continue the adjudication of the application to adjust status from temporary to permanent resident under section 245A of the Act. .

**ORDER:** The appeal is sustained.

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<sup>2</sup> In her current declaration dated April 3, 2008, the applicant states that she made an error on the earlier declaration in that the 2<sup>nd</sup> coup occurred on September 25, 1987.