

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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JIN YANG,

Plaintiff-Appellant,

v

UNIVERSITY OF MICHIGAN REGENTS,

Defendant-Appellee.

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UNPUBLISHED  
October 25, 1996

No. 179597  
LC No. 93-15074-CM

Before: Taylor, P.J. and Markey and N. O. Holowka,\* JJ.

PER CURIAM.

Plaintiff appeals as of right an order entered by the Court of Claims granting summary disposition to defendant. We affirm.

Plaintiff and her family were nationals of the Peoples Republic of China (PRC). They came to the United States under her father's student J-visa and subsequently converted to H-visa status. In 1990, President Bush issued an executive order deferring the return of PRC nationals to the PRC in response to the incidents in Tiananmen Square. Plaintiff enrolled at defendant University of Michigan in the fall of 1992. She sought and was denied resident student status for the 1992-1993 school year.<sup>1</sup> During this time period she was legally in the United States under the executive order. On appeal, she contends that defendant improperly denied resident student status to her for the 1992-1993 school year.

Defendant's Residence Regulations state in pertinent part:

2. No student shall be eligible for classification as a resident unless he/she shall be domiciled in Michigan and has resided in Michigan continuously for not less than one year immediately preceding the first day of classes of the term for which classification is sought.

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\* Circuit judge, sitting on the Court of Appeals by assignment.

3. For purposes of these regulations, a resident student is defined as a student domiciled in the State of Michigan. A non-resident is defined as one whose domicile is elsewhere. A student shall not be considered domiciled in Michigan unless he/she is in continuous, physical presence in this State *and intends to make Michigan his/her permanent home*, not only while in attendance at the university but indefinitely thereafter as well, and has no domicile or intent to be domiciled elsewhere. (Emphasis added).

\* \* \*

6. An alien who has been lawfully admitted for permanent residence in the United States shall not, by reason of that status alone, be disqualified from classification as a resident, provided, however, that aliens who are present in the United States on a temporary or student visa shall not be eligible for classification as a resident.

Plaintiff argues that the court's judgment fails to conform to matters defendant admitted pursuant to MCR 2.312 and that genuine issues of material fact existed due to possible renegeing on admitted matters. We disagree. The trial court correctly concluded that plaintiff's immigration status precluded her from forming the domiciliary intent to be a resident student during the 1992-1993 school year. That conclusion did not turn on the substance of the three requests for admissions at issue. Plaintiff was unable to form the intent to reside indefinitely in Michigan because the executive order provided explicitly temporary protection for PRC nationals that extended only through January 1, 1994. Even if the truth of the assertions in plaintiff's requests for admissions is assumed, it would not affect plaintiff's inability to form the intent to reside indefinitely in Michigan during the relevant time period.

Plaintiff next argues that the court improperly interpreted immigration law to determine that her domiciliary intent was restricted. We disagree. The executive order was an extraordinary measure that provided temporary protection for PRC nationals. It merely deferred enforced departure of PRC nationals and extended authorization for their employment until January 1, 1994. This clearly limited status is inconsistent with establishing an intent to remain indefinitely in the United States.

*Elkins v Moreno*, 435 US 647; 98 S Ct 1338; 55 L Ed 2d 614 (1978), and *Toll v Moreno*, 458 US 1; 102 S Ct 2977; 73 L Ed 2d 563 (1981), indicate that the temporary nature of non-immigrant visas does not, alone, make it impossible for the holders of such visas to establish a United States domicile. All non-immigrant visas are temporary in the sense that they are not immigrant visas. On the other hand, holders of such temporary, non-immigrant visas may seek a change of status and attempt to become permanent resident aliens or citizens. But the executive order at issue was temporary in a different way than the non-immigrant visas discussed in *Elkins* and *Toll*. It was an extraordinary measure that provided for a deviation from standard immigration law in response to the incidents at Tiananmen Square. It stated a definite end date for its protections. This definite end date is inconsistent with an intent to remain in Michigan indefinitely. By its terms, the executive order's protections only extended through January 1, 1994. Accordingly, the executive order allowed plaintiff

to stay in the United States on an explicitly temporary basis. It thus restricted plaintiff from establishing the intent to reside indefinitely in Michigan.

Plaintiff also cites the Chinese Student Protection Act of 1992, 106 Stat 1969, in support of her argument that she should have been classified as a resident. This act applied to PRC nationals applying for adjustment of status during a twelve-month period beginning on July 1, 1993. Thus, it did not apply to plaintiff because she became a permanent resident alien in May, 1993. Therefore, the trial court correctly concluded that plaintiff's status under the executive order precluded her from forming the requisite domiciliary intent to be a resident student.

Affirmed.

/s/ Clifford W. Taylor

/s/ Jane E. Markey

/s/ Nick O. Holowka

<sup>1</sup> Plaintiff became a permanent resident alien in May 1993 and was granted resident student status for the fall 1993 term.