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U.S. Department of Homeland Security  
Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE  
CIS, AAO, 20 Mass, 3/F  
425 I Street, N.W.  
Washington, D.C. 20536

[Redacted]

NOV 15 2003

DATE:

FILE:

[Redacted]

OFFICE: California Service Center

IN RE: Applicant:

[Redacted]

APPLICATION: Application for Adjustment of Status from Temporary to Permanent Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:

[Redacted]

**PUBLIC COPY**

INSTRUCTIONS:

Attached is the decision rendered on your appeal. The file has been returned to the Service Center that processed your case. If your appeal was sustained, or if your case was remanded for further action, the Service Center will contact you. 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*  
for

Robert P. Wiemann, Director  
Administrative Appeals Office

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

The director denied the application for adjustment from temporary to permanent residence because the applicant failed to appear for the required adjustment interview on at least two scheduled dates, and failed to demonstrate that he met the English language and knowledge of U.S. history and government requirements set forth in section 312 of the Immigration and Nationality Act (INA).

On appeal, the applicant states that he does not understand how Citizenship and Immigration Services (CIS) requires him to be present for scheduled interviews in the U.S. relating to his application for adjustment to permanent status, while at the same time denying him permission to reenter the country. He asks if he can be interviewed overseas.

Each applicant shall be interviewed by an immigration officer, except that the adjudicative interview may be waived for a child under 14, or when it is impractical because of the health or advanced age of the applicant. An applicant failing to appear for the scheduled interview may, for good cause, be afforded another interview. Where an applicant fails to appear for two scheduled interviews, his or her application shall be held in abeyance until the end of 43 months from the date the application for temporary residence was approved and adjudicated on the basis of the existing record. 8 C.F.R. 245a.3(e).

In the director's decision, the applicant was informed that his application was denied as the result of failure to appear for at least two successive interviews and, correspondingly, failure to establish that the English and civics requirements had been met. The record reflects that the applicant was afforded interview appointments on July 28, 1998 and, again, on July 1, 1999. The record reflects that the interview notices were properly sent to the applicant's address of record. Additionally, the director properly held the application in abeyance until 43 months had passed from the date of approval of temporary residence.

The applicant states, on appeal, that he does not understand how Citizenship and Immigration Services (CIS) requires him to be present for scheduled interviews in the U.S. relating to his application for adjustment to permanent status, after having denied him permission to reenter the country. However, the applicant's inability to obtain reentry into the U.S. resulted from his own failure to obtain the proper authorization for reentry prior to having departed the U.S. for Hong Kong in January 1998.

The applicant requests that he be interviewed overseas. There is no specific provision allowing for an overseas interview. Furthermore, as of this date, no such interview has been conducted.

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 the United States, 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.3(b). Because he has not been interviewed, the applicant has failed to meet this burden. Since that requirement may not be waived, the applicant is ineligible for adjustment from temporary to permanent resident status.

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