U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: AUG 25 2004

IN RE: Applicant: [redacted]

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

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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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 denied the application because the applicant failed to submit evidence that she resided in the United States from 1981 to 1988 as claimed.

On appeal, the applicant wonders if her case can be reopened.

An applicant for temporary resident status 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 Immigration and Nationality Act, 8 U.S.C. § 1255a(a)(2).

An applicant for temporary resident status under section 245A of the Act has the burden to establish by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, is admissible to the United States and is otherwise eligible for adjustment of status under this section. 8 C.F.R. § 245a.2(d)(5).

On October 7, 1988 the applicant was interviewed by an officer of the Immigration and Naturalization Service (INS) regarding her application. The officer recorded in his notes that the applicant had no evidence of residence for the 1982-86 period. Actually, there was, and is, no evidence of residence in the record for any of the time from pre-1982 through May 4, 1988, the filing date of her application. It is extremely likely that the officer advised the applicant of this shortcoming. However, she did not submit any evidence at any time after the interview.

The director sent a notice to the applicant on March 26, 1992, explaining that the application would be denied if she did not provide the required evidence. A postal receipt demonstrates that the notice was received and signed for. No response was received from the applicant, and the director denied the application.

In her January 14, 2004 statement on appeal the applicant asks if her case may be reopened. To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony. 8 C.F.R. § 245a.2(d)(5). Given the total lack of evidence, it is clear that no favorable action can be taken on the applicant's appeal.

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). The applicant has failed to meet this burden.

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