



U.S. Citizenship
and Immigration
Services

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DEC 12 2006

FILE:

[REDACTED]

Office: CALIFORNIA SERVICE CENTER

Date:

XSF-88-521-4103

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:

[REDACTED]

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, Chief
Administrative Appeals Office

DISCUSSION: The application for temporary resident status was denied by the Director, Western Service Center. An appeal was filed, and the application was then reopened and denied by the Director, California Service Center. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The application was initially denied because the applicant had purportedly failed to file a report of medical examination. However, he had filed the report, and his application was, therefore, reopened. It was later denied because he failed to report for fingerprinting. The applicant has not responded to the second denial.

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).

An applicant for temporary resident status must present documents establishing proof of identity, proof of residence, and proof of financial responsibility, as well as photographs, a completed Fingerprint Card (Form FD-258), and a fully completed Medical Examination for Aliens Seeking Adjustment of Status (Form I-693). 8 C.F.R. § 245a.2(d).

The applicant did furnish a completed Fingerprint Card when he filed his application in 1988. However, the validity period of such fingerprint check expired. The Director, California Service Center, sent a notice to the applicant and counsel on February 21, 2002, advising them of the need for the applicant to report to the Sacramento office of the Immigration and Naturalization Service on March 21, 2002 for fingerprinting. Both notices were returned to sender. Neither the applicant nor counsel has submitted anything to the record in thirteen years.

When the director denied the application, he incorrectly stated that the applicant had been advised to report for fingerprinting at Agana, Guam. He also incorrectly referred to this case at one point as that of a special agricultural worker. Nevertheless, these were innocent errors that did not affect the validity of the denial.

Declarations by an applicant that he has not had a criminal record are subject to a verification of facts by the Service. The applicant must agree to fully cooperate in the verification process. Failure to assist the Service in verifying information necessary for the adjudication of the application may result in a denial of the application. 8 C.F.R. § 245a.2(k)(5).

Without a fingerprint check, the applicant's claim on his application that he has not been convicted or even arrested cannot be verified.

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 his failure to report for the mandatory fingerprinting, the applicant has not met this burden.

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