



U.S. Citizenship  
and Immigration  
Services

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FILE:

XSI 87 015 1093

Office: CALIFORNIA SERVICE CENTER

Date: AUG 08 2007

IN RE:

Applicant:

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:

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 Director, Western Regional Processing Facility, erroneously issued a notice of termination. The appeal from that decision subsequently came before the Administrative Appeals Office (AAO). In a more recent decision, the Director, California Service Center, reopened the matter *sua sponte* and issued a new denial of the applicant's Form I-687, Application for Status as a Temporary Resident.<sup>1</sup> The matter is currently before the AAO on appeal. The appeal will be dismissed.

The director's most recent decision dated August 7, 2006 was based on the determination that the applicant failed to comply with Citizenship and Immigration Service's (CIS) request for the applicant to appear for fingerprinting.

In response to the director's latest decision, counsel asserts that the applicant was eligible for temporary resident status as the derivative child of an alien who obtained temporary resident status pursuant to Section 210A of the Act. Counsel also asserts that the applicant is eligible for temporary resident status in her own right pursuant to Section 245A of the Immigration and Nationality Act, 8 U.S.C. § 1255a.

With regard to counsel's first assertion, whether the applicant was eligible to derive status from her father is not an issue that is before the AAO in this proceeding. Regardless of whether counsel's assertion is plausible, the AAO is not the proper venue to make this determination. The remaining question of the applicant's eligibility for temporary residence will be addressed below.

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 Act.

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). In addition, the applicant must appear for a personal interview at the legalization office as scheduled. 8 C.F.R. § 245a.2(e)(1).

In the director's latest decision, the applicant was informed that the application could not be approved because she had failed to comply with the requirement that she appear for fingerprinting. Although given ample opportunities to do so, the applicant has failed to comply with CIS requirements. Further, while counsel

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<sup>1</sup> The record shows that on April 28, 2006 the director issued the first motion to reopen/new notice of decision. However, that decision was based on the filing of a Form I-700 pursuant to Section 210A of the Act, which does not apply in the present matter. As such, the director issued another motion to reopen/new notice of decision, which reflects the applicant's filing of a legalization application Form I-687 pursuant to Section 245A of the Act.

provides a copy of the request to appear for fingerprinting, which was issued by CIS on November 5, 2004, he provided no explanation as to why the applicant failed to comply with CIS's instructions.

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 mandatory fingerprinting, the applicant has failed to meet this burden.

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