



U.S. Citizenship
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Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

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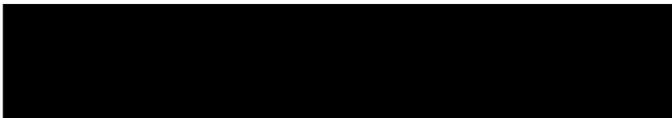
Applicant:



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 application for temporary resident status was initially by the Director, Western Regional Processing Facility. The record shows that an appeal subsequently filed with the Administrative Appeals Office (AAO) was dismissed. Upon further review, the matter was reopened and remanded to the service center for further action. The director has since reviewed the record and has issued a new decision denying the application for temporary resident status. The applicant's appeal with the AAO remains in effect. The appeal will be dismissed.

The director's most recent denial of the application for temporary resident status is based on the determination that the applicant failed to comply with Citizenship and Immigration Services' (CIS) request for the applicant to appear for fingerprinting.

While the applicant submitted an appeal addressing the director's earlier decision, the appeal predates the director's most recent denial. The applicant has not addressed the ground cited for the notice of denial dated September 7, 2006. Thus, the only appeal statement on record is one requesting a copy of the applicant's legalization file and addressing the grounds for denial cited in an earlier decision. The record shows that CIS complied with the applicant's request on May 9, 1990 and again on September 24, 1996.

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 (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). In addition, the applicant must appear for a personal interview at the legalization office as scheduled. 8 C.F.R. § 245a.2(e)(1). The interview may be waived only for a child under the age of 14, or when it would be impractical because of the health or advanced age of the applicant. 8 C.F.R. § 245a.2(j).

Evidence to support an application for temporary resident status shall include proof of identity. 8 C.F.R. § 245a.2(d). In order to establish identity, an applicant may submit, in order of preference, (i) Passport; (ii) Birth certificate; (iii) any national identity document from the alien's country of origin bearing photo and fingerprint; (iv) Driver's license or similar document issued by state if it contains a photo; (v) Baptismal Record/Marriage Certificate; or (vi) Affidavits. 8 C.F.R. § 245a.2(d)(1).

An applicant for temporary resident status must submit to an examination by a designated civil surgeon at no expense to the government. The designated civil surgeon must report on the findings of the mental and physical condition of the applicant and the determination of the alien's immunization status. Results of the medical examination must be presented to the Service at the time of interview and must be incorporated into the record. 8 C.F.R. § 245a.2(i). According to outstanding Service instructions, the results of any medical examination given on or after December 1, 1987 must include the results of a serologic test for HIV infection.

In the director's decision, the applicant was informed that the application could not be approved because he had failed to comply with the requirement that he appear for fingerprinting. Although given ample opportunities to do so, the applicant has failed to comply with this Service requirement.

An applicant for temporary resident 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.