

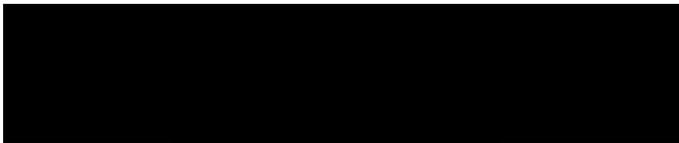


U.S. Citizenship
and Immigration
Services

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invasion of personal privacy

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FILE:

XSR 88 517 3119

Office: CALIFORNIA SERVICE CENTER

Date: DEC 17 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:

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, Chief
Administrative Appeals Office

DISCUSSION: The applicant's temporary resident status was terminated by the Director, Western Service Center, and the matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The record indicates that the applicant was granted temporary resident status on July 8, 1989. Subsequent review of the record of proceedings revealed that the applicant should not have been granted temporary resident status because he failed to report for two scheduled interviews. The director subsequently terminated the applicant's temporary resident status because the applicant failed to report for two interviews as required.

On appeal, the applicant stated that he had moved to a different apartment number in the same apartment complex and never received any interview appointment notices.

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). 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).

The required interview was originally scheduled for November 1, 1988. The applicant failed to appear. The interview was rescheduled for January 26, 1989, and the applicant once again failed to appear for his interview as scheduled. Both interview notices were mailed to the applicant at his address of record,

On June 30, 1992, the director issued a notice informing the applicant of his intent to terminate his temporary resident status because he failed to appear for two scheduled interviews as required under 8 C.F.R. § 245a.2(e)(1). The notice was mailed to the applicant at his address of record, but he failed to respond to the notice requesting another opportunity to be interviewed.

The director, therefore, terminated the applicant's temporary resident status on October 23, 1992, because he failed to appear for two interviews as scheduled.

On appeal, the applicant stated that he had moved to a different apartment and had never received any interview notices. The director mailed informational copies of the Notice of Intent to Terminate and the Notice of Termination to the applicant at his updated address on November 30, 1992.

The applicant failed to appear to two scheduled interviews as required. Since this requirement may not be waived, the applicant is ineligible for temporary resident status. Therefore, the director's termination of the applicant's temporary resident status will be affirmed.

It is noted the record of proceedings contains a handwritten notation dated January 11, 1993, indicating that the case would be reopened and the applicant provided with another opportunity to be interviewed. CIS computer records also indicate that the case was reopened on January 11, 1993. However, there is no indication that a reopening notice was ever sent to the applicant or that he was ever issued a new interview appointment notice. Furthermore, there does not appear to be any basis for reopening the case and providing the applicant with a new opportunity to be interviewed. The applicant has repeatedly failed to appear for an interview as required or to timely request another opportunity to be interviewed. Therefore, the CIS motion reopening the case is hereby withdrawn. The appeal will be dismissed.

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 interview, the applicant has not met this burden.

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