



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED]
XLA 88 101 2270

Office: TEXAS SERVICE CENTER

Date: FEB 07 2007

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, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director denied the application based on the determination that the applicant is excludable from the United States under section 212(a)(6)(C) of the Act for visa fraud and failed to file a waiver of excludability.

On appeal, counsel for the applicant disputes the director's findings and requests that Citizenship and Immigration Services (CIS) provide the applicant a copy of his legalization file. The record shows that CIS complied with counsel's request on April 28, 2005.

Section 212(a)(C)(i) of the Act states that an alien who has committed visa fraud is excludable from entry into the United States. However, such excludability can be waived. *See* § 212(i) of the Act.

Section 245A(a)(4)(A) of the Act requires an alien to establish that he is admissible as an immigrant to the United States. Accordingly, in a notice dated June 17, 1992, the director issued a notice of his intent to deny (NOID) the application due to the applicant's excludability as discussed above. The applicant was allowed time in which to respond to the director's notice and apply for a waiver of excludability. Such notice was mailed to the applicant's last known address of record at that time. However, the record does not contain evidence of a response.

The director ultimately denied the application in a notice dated November 1, 2004 citing the applicant's failure to establish admissibility by filing the required waiver application. On appeal, counsel asserts that the applicant's only unlawful entry into the United States was when he entered with his parents as a minor. Counsel further claims that the applicant lawfully entered the United States in 1986 using a temporary resident card. However, based on the documentation in the applicant's record, there is no indication that temporary residence was granted. To the contrary, the record clearly shows the director's intent to deny the application for adjustment to the status of a temporary resident. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Despite the fact that CIS complied with counsel's request for a copy of the applicant's file, counsel has provided no evidence to overcome the ground for denial cited in the director's decision.

Under these circumstances, it must be concluded that the applicant has failed to establish admissibility into the United States. Therefore, the applicant has not established eligibility by a preponderance of the evidence as required by 8 C.F.R. § 245a.2(d)(5).

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