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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
XAH 88 155 7047

Office: CALIFORNIA SERVICE CENTER

Date: FEB 16 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:

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.

A handwritten signature in black ink, appearing to be "R. P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application for temporary resident status was denied by the Director, California Service Center. The matter is before the Administrative Appeals Office on appeal. The decision of the director will be withdrawn and the application will be remanded for further action.

The director initially denied the application because the applicant failed to provide supporting documentation as requested. On appeal, the Legalization Appeals Unit remanded the case for further consideration. On January 26, 2005, the director issued a new decision denying the application because the applicant did not respond to a notice to appear for fingerprinting.

However, the record shows that the Fingerprint Notification was dated October 25, 2004 and was returned by the postal service as unclaimed. The notification was sent to the applicant's former address from 1996 and was not sent to the most recent address of the applicant in the record, namely, [REDACTED], South San Francisco, California [REDACTED]. This is the address that the petitioner stated on his Form I-765, application for employment authorization, which was approved by the San Francisco District Office on November 29, 2001.

The director denied the application pursuant to the regulation at 8 C.F.R. § 245a.2(k)(5) which states that "[f]ailure to assist the Service in verifying information necessary for the adjudication of the application may result in a negative determination." Yet because the applicant never received the Fingerprint Notification, his resultant inability to comply does not constitute a failure to assist. Accordingly, the case will be remanded for issuance of a new Fingerprint Notification to be sent to the applicant's most recent address of record in South San Francisco.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with this decision.