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**U.S. Citizenship
and Immigration
Services**

LI

FILE: [REDACTED]
XEL 88 150 1036

Office: CALIFORNIA SERVICE CENTER

Date: JUN 12 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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for temporary resident status was initially denied by the Director, Southern Regional Processing Facility. An appeal was subsequently filed with the Administrative Appeals Office (AAO). The matter was later reopened and a new denial was ultimately issued by the Director, California Service Center. The appeal, which is still pending with the AAO, will be dismissed.

The first denial was based on the determination that the applicant failed to appear for a scheduled interview and did not provide evidence of his unlawful residence in the United States during the relevant statutory period.

The director's most recent adverse decision is based on the conclusion that the applicant failed to provide the Form I-693 as requested in a notice dated November 14, 2005.

While the applicant submitted an appeal addressing one of the director's earlier decisions, the appeal predates the director's most recent denial of the application for temporary resident status. The applicant has not addressed the ground cited in the denial dated January 30, 2006. Thus, the only appeal statement on record is one requesting another chance to provide documents in support of the applicant's Form I-687.

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).

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 submit a medical examination report on Form I-693. Although given ample opportunities to do so, the applicant has failed to comply with Service requirements. Since this requirement may not be waived, the applicant is ineligible for temporary resident status.

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). The applicant has failed to meet this burden.

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