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MAR 01 2007

FILE: [Redacted]
XSL 88 177 2045

Office: CALIFORNIA SERVICE CENTER

Date:

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:



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. The applicant's appeal of the director's decision came before the Administrative Appeals Office (AAO) where the matter was remanded with instructions for further action. The director complied with the AAO's instructions and ultimately issued another decision denying the applicant's application. The appeal will be dismissed.

The director's first denial was based on the determination that the applicant failed to establish that she was unlawful and known to the government during the requisite statutory period. The applicant filed an appeal and requested that Citizenship and Immigration Services (CIS) provide her a copy of her legalization file. CIS complied with that request on July 7, 1997. The AAO subsequently reviewed the applicant's record of proceeding and determined that the director's decision was erroneous. Specifically, the AAO determined, contrary to the director's finding, that the applicant adequately established that she was unlawful and known to the government during the relevant statutory period. However, the AAO determined that the applicant is excludable from the United States under section 212(a)(6)(C)(i) of the Act for visa fraud. Accordingly, the AAO remanded the matter back to the service center, instructing the director to notify the applicant that by filing a waiver of excludability she may be able to rectify her inadmissibility.

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/she is admissible as an immigrant to the United States. Pursuant to AAO instructions, the director issued a new notice of intent to deny,¹ notifying the applicant of her right to file a waiver of excludability. The applicant was allowed one year and one month to rectify her inadmissibility. The record indicates that the applicant failed to file the necessary waiver application.

Accordingly, on April 15, 2005, the director issued a notice denying the applicant's application for adjustment of status to that of a temporary resident. A copy of the notice was sent to the applicant and her counsel.² The director's decision was based on the applicant's failure to establish admissibility.

To date, however, neither the applicant nor counsel has provided evidence to overcome the ground for denial cited in the director's most recent decision.

¹ The notice of intent to deny was erroneously accompanied by a cover sheet titled "Response to a Notice of Intent to Terminate." The AAO notes that this error was not material to the issue of the applicant's eligibility for the benefit sought and does not alter the outcome, as the notice itself clearly informed the applicant of the potential for denial if the applicant failed to overcome the adverse evidence cited therein.

² It is noted that the AAO's remand and subsequent notice of intent and notice of denial were sent to the applicant's last known address of record. While the notices sent to the applicant were returned as undeliverable, there is no evidence suggesting that the applicant updated the address currently on record. Furthermore, the record contains a signed postal return receipt suggesting counsel's receipt of the latest notice of denial.

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.