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U.S. Citizenship
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Services

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MAY 10 2007

FILE: [REDACTED]
XST 88 500 1008

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: 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 read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The termination of the applicant's temporary resident status by the Director, California Service Center, is before the Administrative Appeals Office (AAO) on appeal. The record shows a lengthy procedural history, which includes two separate decisions from the AAO. The AAO initially dismissed the applicant's appeal. However, the matter has since been reopened. A subsequent review by the AAO resulted in the matter being remanded to the service center for further action. The director has since reviewed the record and has ultimately terminated the applicant's temporary resident status. The matter is now before the AAO on appeal. The appeal will be dismissed.

The director's most recent termination of the applicant's temporary resident status is based on the determination that the applicant failed to comply with Citizenship and Immigration Service's (CIS) request for the applicant to appear for fingerprinting.

While the applicant submitted an appeal addressing one of the director's earlier decisions, the appeal predates the director's most recent termination of the applicant's temporary resident status. The applicant has not addressed the ground cited for the termination dated April 21, 2005. Thus, the only appeal statement on record is one requesting a copy of the applicant's legalization file. The record shows that CIS complied with the applicant's request on August 22, 1997.

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).

In the director's decision dated April 21, 2005, the applicant was informed that the application could not be approved because he had failed to comply with the requirement that he appear at the CIS office in Fresno, California to be fingerprinted. Although given ample opportunities to do so, the applicant has failed to comply with this CIS requirement. 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. As the applicant has not overcome the basis for termination of status, the appeal must be dismissed.

Beyond the director's decision, the applicant is ineligible for temporary residence based on his criminal record, which consists of the following offenses:¹

1. On May 18, 1972, the applicant was sentenced to 60 days in jail for illegally entering the United States, a misdemeanor in violation of 8 U.S.C. § 1325;
2. On June 26, 1974, the applicant was convicted of possession of a controlled substance with intent to distribute, a felony in violation of 21 U.S.C. § 841(a)(1). The applicant was sentenced to five years of probation.

The temporary resident status of an alien who has been convicted of a felony or three or more misdemeanors in the United States may be terminated at any time. 8 C.F.R. § 245a.2(u)(1)(iii). Additionally, an alien is excludable if he has been convicted of, or admits having committed, or admits committing acts which constitute the essential elements of a violation of (or a conspiracy to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 USC 802). Section 212(a)(2)(A)(i)(II) of the Act, formerly section 212(a)(23) of the Act. An alien is also excludable if a consular officer or immigration officer knows or has reason to believe he is or has been an illicit trafficker in any such controlled substance. Section 212(a)(2)(C) of the Act, formerly section 212(a)(23) of the Act. Thus, based on the criminal conviction described in No. 2 above, the applicant is no longer eligible for temporary residence.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a de novo basis).

The applicant is ineligible for temporary residence for the above stated reasons, with each considered as an independent and alternative basis for denial.

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

¹ As the applicant failed to provide a more recent set of fingerprints, this may not be a comprehensive list of criminal offenses.