



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
MSC-05-214-10165

Office: NEWARK, NJ

Date: NOV 13 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. The file has 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, Newark, New Jersey District Office, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because she found the evidence submitted with the application was insufficient to establish eligibility for Temporary Resident Status pursuant to the terms of the CSS/Newman Settlement Agreements. Specifically, director noted that the applicant indicated on his Form I-687 that he began residing in the United States in 1992 and was not employed in the United States until 1993. However, at the time of his interview with a Citizenship and Immigration Service officer, he stated that he first entered the United States in 1981 and then resided consistently with no absences until 1992. The director further noted that affidavits submitted by the applicant contained testimony that was not consistent with other evidence in the record. One example of such an inconsistency is found in an affidavit from Avra Cabral, who states that the applicant was employed by Gupta Novelties. However, the applicant indicated on his Form I-687 that he was a self-employed street vendor and that this is the only employment he has ever had in the United States. Because of inconsistencies between the applicant's Form I-687 and his testimony and other evidence he submitted in support of his application, the director found the applicant did not prove by a preponderance of the evidence that he was eligible to adjust status to that of a Temporary Resident as applicants for adjustment to such status must do pursuant to the regulation at 8 C.F.R. § 245a.2(d)(5).

On appeal, the applicant submits a Form I-694 Notice of Appeal of Decision on which he states that previously submitted documents and his testimony were sufficient to allow him to adjust status to that of a Temporary Resident. He goes on to state that the director's decision was arbitrary and to say that the director abused her discretion should have been used in a fair and candid manner. It is noted here that the Service does not have the authority to deny applicant's for adjustment of status to Temporary Residents as a matter of discretion. The record does not indicate that the director did so in this case, but rather, it indicates that the director applied the same legal standard to this applicant that she does to all applicants. She found and the record supports that he did not meet his burden of establishing, by a preponderance of the evidence that he resided continuously in the United States for the duration of the requisite period. Therefore, because the applicant did not satisfy this burden, the regulations specify that this applicant is not eligible to adjust status to that of a Temporary Resident. The applicant provided no additional evidence or explanation to overcome the reasons for denial of his application.

As stated in 8 C.F.R. § 103.3(a)(3)(iv), any appeal which is filed that fails to state the reason for appeal, or is patently frivolous, will be summarily dismissed.

A review of the decision reveals the director accurately set forth a legitimate basis for denial of the application. On appeal, the applicant has not presented additional evidence. Nor has he addressed the grounds stated for denial. The appeal must therefore be summarily dismissed.

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