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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
MSC-05-294-11477

Office: LOS ANGELES

Date: **NOV 12 2008**

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Inadmissibility 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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.


Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for waiver of inadmissibility was denied by the District Director, Los Angeles, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as moot.

On July 21, 2005, the applicant submitted a Form I-690, Application for Waiver of Grounds of Excludability (now referred to as Inadmissibility) concurrently with a Form I-687, Application for Status as a Temporary Resident Under Section 245A of the Act. The applicant filed a Form I-690 to overcome the ground of inadmissibility arising under section 212(a)(6)(A)(i) of the Immigration and Nationality Act (Act), 8 U.S.C. § 1182(a)(6)(A)(i), for aliens present in the United States without being admitted or paroled. The director determined that the applicant had not provided a humanitarian or public interest reason for the grant of the waiver, and denied the application.

On appeal, the applicant asserts that though she did not maintain continuous residence in the United States during the requisite, Citizenship and Immigration Services (CIS) should grant her application, because CIS allowed her to file that application knowing that she was not eligible for temporary resident status. The applicant further asserts that she did not attempt to file an application during the original filing period. The applicant also furnished California birth certificates for her United States Citizen children, and [REDACTED]

The applicant has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite period, is admissible to the United States under the provisions of section 245A of the Act, and is otherwise eligible for adjustment of status. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.2(d)(5).

On March 29, 2007, the director denied the applicant's Form I-687. In denying the application, the director found that during the applicant's interview she testified that she first entered the United States in 1981, departed the United States in 1981, and returned to the United States in November 1982. The director determined that this departure exceeded 45 days; therefore the applicant failed to continuously reside in the United States per the regulatory definition of continuous residence. The director therefore concluded that the applicant failed to establish eligibility for temporary resident status. The applicant appealed the denial of her application to the AAO. The AAO dismissed the appeal, finding that the applicant failed to overcome the basis for the director's denial.

The applicant filed a Form I-690 waiver application in an attempt to overcome a ground of inadmissibility. However, the director did not determine the applicant to be ineligible to adjust to temporary resident status based on a ground of inadmissibility. Instead, the director determined the applicant to be ineligible because she failed to establish that she resided continuously the United States for the requisite period. The AAO dismissed the appeal, concurring with the director's decision that she did not reside continuously in the United States for the duration of the

requisite period. There is no waiver available for this ground of ineligibility. Hence, even if the director granted the applicant's waiver application, she would remain ineligible for temporary resident status. Therefore, pursuit of the instant matter is moot and the appeal is dismissed.

ORDER: The appeal is dismissed.