

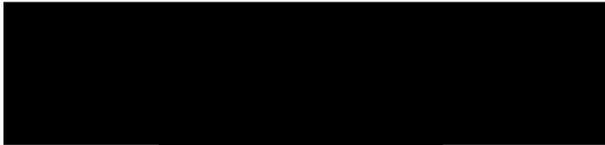
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
MSC-05-316-11055

Office: LOS ANGELES

Date: OCT 02 2006

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:



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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 August 12, 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 he entered the United States without inspection in 1979. The applicant states that he has had the following absences from the United States: December 1982 until February 1983; November 1983 until December 1983; May 1984; July 1986 until August 1986; and April 1988 until May 1988. The applicant states that he has been continuously present in the United States since his last entry. The applicant asserts that when he attempted to file his application he was front desked or told that he did not qualify because of his exit during the qualifying time period. The applicant furnished as corroborating documentation, identical letters from [REDACTED] and [REDACTED] which provide that they have known him since 1982. The applicant also furnished California birth certificates for his three children, [REDACTED] 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 October 10, 2006, the director denied the applicant's Form I-687. In denying the application, the director found that during the applicant's interview he testified that he first entered the United States in 1979, departed the United States in 1982, and returned to the United States after four months. The director determined that this departure exceeded 45 days; therefore it fails to meet the definition of continuous residence. The director found that the applicant indicated in a previously filed application that he is a national of Guatemala.¹ The director determined that the applicant's testimony is not credible. The director concluded that the applicant failed to establish eligibility for temporary resident status. The applicant appealed the denial of his application to the AAO. The AAO dismissed the appeal, finding that the applicant failed to overcome the basis

¹ The applicant indicated on his Form I-687 that he is a citizen of Mexico. The applicant furnished a Mexican birth certificate as his identity document.

for the director's denial. The AAO further determined that the applicant had not furnished sufficient evidence of his residence in *the United States during the requisite period*.

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 he failed to establish that he resided continuously in the United States for the requisite period. The AAO dismissed the appeal, concurring with the director's decision, and making an additional finding that the applicant had not furnished sufficient evidence of his residence in the United States during the requisite period. There is no waiver available for this ground of ineligibility. Hence, even if the director granted the applicant's waiver application, he 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.