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**U.S. Citizenship
and Immigration
Services**

L2

FILE:

Office: California Service Center

Date: OCT 23 2007

IN RE:

Applicant:

APPLICATION: Application for Adjustment from Temporary to Permanent Resident Status under 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, Director
Administrative Appeals Office

DISCUSSION: The application for adjustment from temporary to permanent resident status was approved by the Administrative Appeals Office (AAO) on April 10, 2006, contingent upon completion of the requisite criminal and background checks. The matter was remanded to the California Service Center for those checks to be performed. The applicant was interviewed regarding his adjustment to permanent resident status and issued a Notice of Intent to Deny (NOID) by the California District Director on May 1, 2007, based on the applicant's statement at the interview that he had been absent from the United States for more than 30 days after a departure in 1989. The applicant, through counsel, has requested that the NOID be withdrawn and the prior order by the AAO be carried out. The District Director has requested that the AAO reopen its prior decision sua sponte to consider the stated absence as a new ground of denial.¹ The AAO declines to reopen its prior decision and reiterates its prior order approving the application for adjustment of status from lawful temporary to permanent resident, contingent upon completion of the requisite criminal and background checks.

The applicant was granted temporary resident status on August 30, 1989 pursuant to section 245A of the Immigration and Nationality Act (Act), 8 U.S.C. § 1255a. He timely applied for adjustment to permanent resident status and would have been eligible for such status 19 months later. *See* 8 C.F.R. § 245a.3. In his NOID, the District Director found that the applicant had been absent for more than 30 days during the relevant period and had thus failed to establish continuous residence in the United States. He based this conclusion on the applicant's statement during his interview on May 1, 2007. The relevant notes of the interviewer, verbatim, are, "Applicant stated that he departed the U.S. left the U.S. in 15/1989 for Christmas stayed for 2 months – Feb 90."

Title 8 C.F.R. § 245a.3 provides in pertinent part that applicants for adjustment from temporary to permanent resident status must establish continuous residence in the United States since the date they were granted such temporary resident status and, to do so, they must show that "no single absence from the United States has exceeded thirty (30) days, and the aggregate of all absences has not exceeded ninety (90) days between the date of approval of the temporary resident application . . . and the date the alien applied or became eligible for permanent resident status, whichever is later." The regulation further states that such absence "shall break the continuity of such residence, unless the temporary resident can establish to the satisfaction of the district director . . . that he or she did not, in fact, abandon his or her residence in the United States during such period." *Id.*

The district director is requesting that the AAO reopen its prior decision based on the interview note described above. The note, however, absent any signed statement or additional corroborating evidence, is not a sufficient basis to reopen the prior decision. It contains obvious error ("15/1989"), is vague and inconclusive of the actual dates of absence, and is contradicted by other evidence of record. Such evidence includes the applicant's prior statement, reported by government counsel during a hearing on his request for cancellation of removal in 2000. Notes taken at that hearing state, "1989/Dec – went back to Mexico to visit family for 30 days." The record also includes the decision of the Board of Immigration Appeals (BIA) upholding the Immigration Judge's denial of cancellation of removal, dated May 14, 2002. The BIA found

¹ The AAO may sua sponte reopen any proceeding conducted by the AAO under 8 C.F.R. § 245a and reconsider any decision rendered in such proceeding. 8 C.F.R. § 103.5(b).

that the respondent (the applicant) had not shown the requisite hardship to his parents or his three U.S. citizen children, but also referred to the Immigration Judge's findings that he had resided continuously in the United States since at least 1990 and that his common-law wife, children, parents and siblings all resided in the United States. The record also includes evidence that the applicant consistently worked in the United States and paid taxes, including from 1989 through 1999.

The evidence does not support a conclusion that the applicant was absent in 1989-90 for over 30 days. Moreover, had he been absent for over 30 days, there is ample evidence in the record showing that he did not, in fact, abandon his residence during such absence.

The record includes numerous applications and statements by the applicant dating back to 1989 when he applied for and was granted temporary resident status. As is well documented in the AAO's decision of April 10, 2006, the applicant was prevented from adjusting to lawful permanent resident status in November 1993 due to failure to consider relevant evidence at that time. The AAO found that the applicant was harmed due to this agency error and, in an attempt to remedy that error, ordered that the applicant be found eligible for adjustment of status *nunc pro tunc* to November 10, 1993 contingent upon required criminal and security checks.

After reviewing the record, the AAO finds no grounds to reopen its prior decision or change its prior order, especially in light of the entire record and the AAO's effort to remedy past agency error. The request to sua sponte reopen its prior decision is therefore denied. The AAO's order of April 10, 2006 remains in effect.

ORDER: The AAO reiterates its prior order that the application for adjustment of status from lawful temporary to permanent resident is approved contingent upon completion of the requisite criminal and background checks.