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U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: JUL 07 2004

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 service center that processed 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 temporary resident status was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The director concluded the applicant had abandoned his application for temporary residence by failing to respond to a request for additional supporting documentation within the requisite time and, therefore, denied the application.

On appeal, counsel asserts that the applicant did not abandon his application, but rather his claim to eligibility is linked to that of his father. Counsel contends that the adjudication of the applicant's father's application is proceeding. Counsel argues that the applications of the father and the applicant should not be separated, as the applicant's claim to eligibility is dependent upon evidence mailed with the father's application. Counsel declares that the separation of the father's application from that of the applicant is unreasonable and a violation of equal protection. Counsel specifically states that the appeal is neither a motion to reopen nor reconsider.

If all requested initial evidence and requested additional evidence is not submitted by the required date, the application or petition shall be considered abandoned, and accordingly shall be denied. 8 C.F.R. § 103.2(b)(13).

The record reflects that the applicant submitted a Form I-687, Application for Temporary Resident Status Pursuant to Section 245A of the Immigration and Nationality Act (INA), to the Immigration and Naturalization Service, or the Service (now Citizenship and Immigration Services, or CIS) on June 22, 2003. The applicant included a notice from the Service's Vermont Service Center that is addressed to his father and dated February 10, 2001. The notice informed the applicant's father that he was to submit documentation, including a Form I-687 application for temporary residence (legalization), as his legalization questionnaire had been approved because he had established that he had been "front desked" (informed that he was not eligible for legalization when he attempted to file a legalization application in the initial application period from May 5, 1987 to May 4, 1988). This legalization questionnaire was utilized by the Service in a separate program to identify aliens who had been front desked during the initial application period and allow such aliens to file a Form I-687 legalization application as if it had been timely filed. This notice specifically informed only the applicant's father to submit the Form I-687 legalization application, supporting documentation and corresponding fee.

On November 20, 2002, the Service issued a notice to the applicant informing him that the notice dated February 10, 2001, applied only to his father. The applicant was also requested to provide further documentation in support of the Form I-687 legalization application. The applicant was granted 12 weeks to respond to the Service's notice. The record shows that the applicant failed to respond to the Service's notice. The director determined the application had been abandoned and, therefore, denied the application pursuant to 8 C.F.R. § 103.2(b)(13). The director did, however, advise the petitioner that it could file a motion to reopen in accordance with 8 C.F.R. 103.5(a)(2).

A denial due to abandonment may not be appealed, but an applicant may file a motion to reopen or reconsider under 8 C.F.R. § 103.5. 8 C.F.R. § 103.2(b)(15).

Counsel infers that the current proceeding is an appeal and specifies that it is neither a motion to reopen nor reconsider. As a denial due to abandonment cannot be appealed under 8 C.F.R. § 103.2(b)(15), the appeal must be rejected.

ORDER: The appeal is rejected.