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U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529

U.S. Citizenship and Immigration Services

L-1

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: JUL 28 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. 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 temporary resident status was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director denied the application because the applicant failed to establish that she had resided continuously in the United States from prior to January 1, 1982 through the date the application was filed.

On appeal, counsel stated that the applicant did begin her residence in the United States prior to January 1, 1982. He pointed out that, while the director accused the applicant of withholding certain information, she had actually provided it in response to three different requests of the director. Counsel asked for a copy of the record and additional time in which to file a brief. His request for a copy of the record was complied with; however, no brief has been received within the five years since he made the request.

An applicant for temporary resident status must establish that he or she entered the United States before January 1, 1982, and continuously resided in the United States in an unlawful status since such date and through the date the application is filed. *See* Section 245A(a)(2)(A) of the Act, 8 U.S.C. § 1255a(a)(2)(A).

An applicant for temporary resident status under section 245A of the Act has the burden to establish by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, is admissible to the United States and is otherwise eligible for adjustment of status under this section. 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). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony. 8 C.F.R. § 245a.2(d)(6).

Sufficient documentation relating to the applicant's employment and college attendance in the United States from September 1983 on exists in the record. For the period prior to that, the applicant relies on the following documents to establish that she resided continuously in the United States:

- A letter from [redacted] stating that the applicant lived in his house from January 1982 to July 1987;
- A note from Harriet Rogers, a neighbor of Mr. Keefer, indicating that she has known the applicant since 1982;
- The applicant's own statement, on a Form I-690 waiver application filed later in this proceeding, that she began her illegal residence in the United States before 1982.

It is noted that neither Mr. Keefer nor Ms. Rogers state the applicant entered the United States *prior* to January 1982. In fact, on her application for temporary residence, the applicant indicated that her residence and employment in the United States began in January 1982.

This applicant has not submitted any contemporaneous documentation to establish presence in the United States from the time she claimed to have commenced residing in the United States through August 1983. In

light of the fact that the applicant claims to have continuously resided in the United States, this inability to produce contemporaneous documentation of residence raises serious questions regarding the credibility of the claim.

In response to a request for more evidence, the applicant indicated she had no more documentation because she was supported by her sister during the period prior to January 1982. No statement from her sister in support of this claim has been submitted.

As stated above, the inference to be drawn from the documentation provided shall depend on the extent of the documentation. The minimal evidence furnished cannot be considered extensive, and in such cases a negative inference regarding the claim may be made as stated in 8 C.F.R. 245a.2(d)(5).

Additionally, as stated in 8 C.F.R. § 245a.2(d)(6), an applicant's own testimony is insufficient. No one else has testified that the applicant entered the United States and commenced residing before January 1982.

In summary, according to her own application, it is not clear that the applicant even meant to indicate that she entered the United States before January 1, 1982 when she filed the application. There is no evidence that she did enter before that required date, apart from her own testimony. Given that, and the absence of contemporaneous documentation through August 1983, it is concluded that the applicant has failed to establish continuous residence for the required period.

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