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U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: JUN 16 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: Self-represented

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has 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 initially denied and then reopened by the Director, Western Service Center. The application was subsequently denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

Both directors denied the application for lack of prosecution because the applicant failed to appear for the scheduled legalization interview.

On appeal from the initial denial, the applicant indicated that he missed the legalization interview because he had been called out of the country to attend to his father.

The record indicates that the matter was subsequently reopened to allow the applicant another opportunity to appear for his legalization interview.

An applicant for temporary resident status must establish entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status since such date and through the date the application is filed. Section 245A(a)(2) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1255a(a)(2).

An applicant for temporary resident status under section 245A of the INA 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. 8 C.F.R. § 245a.2(d)(5).

An applicant for temporary resident status must present documents establishing proof of identity, proof of residence, and proof of financial responsibility, as well as photographs, a completed Fingerprint Card (Form FD-258), and a fully completed Medical Examination for Aliens Seeking Adjustment of Status (Form I-693). 8 C.F.R. § 245a.2(d). In addition, the applicant must appear for a personal interview at the legalization office as scheduled. 8 C.F.R. § 245a.2(e)(1). The interview may be waived only for a child under the age of 14, or when it would be impractical because of the health or advanced age of the applicant. 8 C.F.R. § 245a.2(j).

In the initial decision, the applicant was informed that the application could not be approved because she failed to comply with the requirement that he appear for his legalization interview. The record shows that the matter was subsequently reopened to allow the applicant another opportunity to appear for his legalization interview. The record further shows that the applicant's legalization interview was subsequently rescheduled for March 23, 1993. The Immigration and Naturalization Service, or the Service (now Citizenship and Immigration Services, or CIS) issued an interview notice to the applicant at his most current address of record which informed him of the date and time he was scheduled to appear for his interview at the Service's Los Angeles, California Legalization Office. The record contains no evidence that this notice was returned by the U.S. Postal Service as either unclaimed or undeliverable. However, the record reflects that the applicant failed to appear for his interview on this date, and that he subsequently failed to submit any statement or documentation putting forth a reason as to why he failed to appear for his rescheduled interview. Although given ample opportunity to do so, the applicant has failed to appear for the required interview pursuant to 8 C.F.R. § 245a.2(e)(1). As the applicant has failed to put forth circumstances warranting a waiver of this requirement, he is ineligible for temporary resident status.

An alien applying for adjustment of status has the burden of proving by a preponderance of evidence that he or she has continuously resided in an unlawful status in the United States from prior to January 1, 1982 through the date of filing, is admissible to the United States under the provisions of section 245A of the INA,

8 U.S.C. § 1255a, and is otherwise eligible for adjustment of status. 8 C.F.R. § 245a.2(d)(5). The applicant has failed to meet this burden.

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