



U.S. Citizenship  
and Immigration  
Services

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prevent clearly unwarranted  
invasion of personal privacy

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FILE: [REDACTED] Office: DENVER

Date: MAY 03 2007

XEL 88 039 4184

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]  
EL PASO, TX 79902

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.

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

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application for temporary resident status was initially denied by the Director, Southern Regional Processing Facility. The case was subsequently reopened and denied again by the District Director, Denver, Colorado, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The Director of the Southern Regional Processing Facility initially denied the application on February 22, 1990, because the applicant failed to report for two scheduled interviews. The director also denied the application because the applicant failed to submit a complete application with all required documentation to establish eligibility for temporary resident status.

On February 20, 1997, the Director of the Southern Service Center reopened the case *sua sponte* and provided the applicant with another opportunity to be interviewed.

On December 5, 2000, the District Director, Denver, Colorado, requested that the applicant provide additional evidence to establish continuous residence in the United States since January 1, 1982, and the final court dispositions of all arrests since his arrival in the United States. The applicant did not respond to the notice.

The District Director, Denver, Colorado, denied the application again on August 23, 2001, after determining that the applicant had abandoned his application by failing to respond to the request for additional evidence. The director informed the applicant that there is no appeal from a denial due to abandonment, but he could file a motion to reopen his case with 30 days of the issuance of the denial decision. The director erred in stating that the applicant could file a motion to reopen or reconsider his case. Legalization applicants do not have the right to file a motion to reopen and/or reconsider. 8 C.F.R. § 245a.4(b)(16).

Since the applicant filed an appeal in response to the initial denial dated February 22, 1990 and the case was subsequently reopened and denied again, the appeal will be applied to the most recent denial decision dated August 23, 2001.

The record contains a postal receipt signed on August 24, 2001, acknowledging receipt of the denial decision, but the applicant has not submitted any additional evidence to supplement his appeal.

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, 8 U.S.C. § 1255a(a)(2).

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. 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).

The applicant's legalization interview was originally scheduled for July 26, 1988. The applicant failed to appear, and the interview was rescheduled for December 8, 1988. However, the applicant again failed to appear. The application was, therefore, denied. Subsequent to the appeal, the matter was reopened, and the applicant was scheduled for interviews in Denver, Colorado, on August 14, 1992, August 24, 1992, August 31, 1992, October 2, 1992 and November 16, 1992. The applicant did not report for any of these scheduled interviews. Additionally, the applicant has not provided the final court disposition of all arrests since his arrival in the United States or sufficient evidence to establish his continuous residence in the United States from January 1, 1982 to the filing date of his application. Since these requirements may not be waived, the applicant is ineligible for temporary resident status for these reasons.

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 Act, 8 U.S.C. § 1255a, and is otherwise eligible for adjustment of status. 8 C.F.R. § 245a.2(d)(5). Due to his failure to report for the mandatory interview, and submit required documents, the applicant has not met this burden.

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