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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
and Immigration
Services

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FILE:

MSC-08-183-10968

Office: NEWARK

Date:

JAN 25 2010

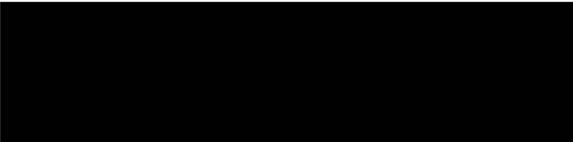
IN RE:

Applicant:



APPLICATION: Application to Adjust Status From Temporary to Permanent Resident pursuant to 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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

Elizabeth McCormack
Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Newark Director terminated the applicant's temporary resident status and subsequently denied the applicant's request to adjust from temporary to permanent resident status. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant submitted a Form I-687, Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (Act). The Form I-687 was approved. Subsequently the applicant filed a Form I-698, Application to Adjust from Temporary to Permanent Residence. The director determined that the applicant had not established by a preponderance of the evidence that he had continuously resided in the United States in an unlawful status since prior to January 1, 1982, and for the duration of the requisite period and issued a Notice of Intent to Terminate. The director noted the inconsistencies in the record regarding the applicant's place of residence during the requisite period. The director terminated the applicant's temporary resident status, finding that the applicant had not met his burden of proof and that he was therefore not eligible to adjust from temporary resident status pursuant to Section 245A of the Act. The director subsequently denied the applicant's Form I-698 based upon the termination of his temporary resident status.

On appeal, counsel asserts that the applicant has submitted sufficient evidence to establish his continuous residence in the United States during the requisite period. He also asserts that because the property tax assessment was sent to the applicant's address in Canada is not proof that the applicant was living there.

The regulation at 8 C.F.R. § 245a.2(u)(1)(i) prescribes that the status of an alien lawfully admitted for temporary residence under section 245A(a)(1) of the Act may be terminated at any time if "[i]t is determined that the alien was ineligible for temporary residence under Section 245A of this Act[.]" The applicant bears the burden to 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 Act, 8 U.S.C. § 1255a(a)(2). The applicant must also establish that he or she has been continuously physically present in the United States since November 6, 1986. Section 245A(a)(3) of the Act, 8 U.S.C. § 1255a(a)(3).

The record in this case shows that the applicant was granted temporary resident status under section 245A(a)(1) of the Act. The director subsequently issued a Notice of Intent to Terminate (NOIT) the applicant's temporary residence. The director found that the applicant failed to provide sufficient evidence to establish his residence in the United States during the requisite period, and terminated the applicant's temporary residence. On appeal, the AAO found that the applicant's temporary resident status was properly terminated pursuant to section 245A(b)(2) of the Act and the corresponding regulation at 8 C.F.R. § 245a.2(u)(1)(iv).¹ Accordingly, the director correctly denied the Form I-698 application to Adjust Status From Temporary to Permanent

¹ The AAO decision in MSC-04-274-10460 dismissing the appeal of the applicant's termination will be issued concurrently with this decision.

Resident. Thus, the appeal in this matter will be dismissed.

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