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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE:



Office: LEE'S SUMMIT

Date:

MAR 02 2010

MSC- 09 080 11051
MSC- 09 201 10831 – APPEAL

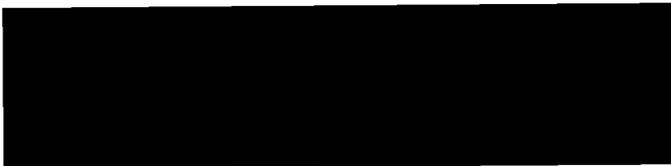
IN RE:

Applicant:



APPLICATION: Application for adjustment from Temporary to Permanent Resident Status under 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.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application to adjust from temporary to permanent resident status was denied by the Director, Lee's Summit, Missouri, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application to adjust from temporary to permanent resident status because the applicant did not establish that he was approved for temporary resident status in the United States, and that he is ineligible to file for adjustment of status from temporary to permanent status.

On appeal, counsel asserts that the applicant filed an application for status as a temporary resident (Form I-687) in 1991 and that the applicant was interviewed for the application in 1991. Counsel does not allege any legal or factual error in the director's decision and has submitted no new evidence bearing on the grounds for denial discussed in the decision. Counsel requested a copy of the Record of Proceedings (ROP) and indicated that she will submit a brief/evidence within 30 days of receiving the ROP. The record reflects that the ROP was processed on August 31, 2009. The record also reflects that counsel did not submit a brief/additional evidence as she had indicated. The AAO will consider the record as complete and will adjudicate the application based on the evidence in the record.

The regulation at 8 C.F.R. § 245a.3(b) provides:

Any alien who has been lawfully admitted for temporary resident status under section 245A of the Act, such status not having been terminated, may apply for adjustment of status to that of an alien lawfully admitted for permanent residence.

The record reflects that the applicant submitted a Form I-687 on August 30, 1991, which was administratively closed by the director on February 3, 2009. There is no other I-687 application in the file. In the Notice of Decision (NOD) dated March 18, 2009, the director notified the applicant that the Form I-687 he filed in 1991 was part of his application for class membership and employment authorization. The record reflects that the applicant filed a Form I-485 – Application to Register Permanent Resident or Adjust Status under the LIFE Act on June 4, 2003. The LIFE application was denied by the director on September 14, 2005. The applicant had the opportunity to file a new Form I-687 application pursuant to the CSS/Newman Settlement Agreement between May 24, 2004 and December 31, 2005 and failed to do so. Assuming the director erred in administratively closing the application for temporary resident status, the fact still remains that the applicant does not have an approved Form I-687, and is not eligible to adjust from temporary to permanent status.

Counsel has failed to establish that the applicant was approved as a temporary resident in the United States or that the director erred in his decision to administratively close the 1991 Form I-687 application.

As stated in 8 C.F.R. § 103.3(a)(3)(iv), any appeal which is filed that fails to state the reason for appeal, or is patently frivolous, will be summarily dismissed.

A review of the decision reveals that the director accurately set forth a legitimate basis for denial of the application. On appeal, the applicant has not presented additional evidence. Nor has he addressed the basis for the denial.

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