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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: AUG 18 2005

IN RE:

Applicant:



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:



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 (legalization) was denied by the Director, Western 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 had failed to establish that he resided continuously in the United States *in an unlawful status* since January 1, 1982.

On appeal, the applicant concedes that he was in a lawful status after having entered the United States as an immigrant. He explains that, after his marriage upon which he gained permanent residence dissolved, he then consulted with immigration officers who advised him that he should apply for lawful temporary resident status by filing this application in the legalization program.

An applicant for temporary residence 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 Act, 8 U.S.C. 1255a(a)(2).

On his application the applicant claimed to have resided in the United States since 1974. There is no indication that he was in a lawful status in the United States until December 5, 1986, when he returned to the United States with a newly issued immigrant visa and was admitted for two years as a "conditional" permanent resident alien on the basis of his marriage to a United States citizen. Although his marriage later dissolved, and he would not have been able to retain permanent resident status beyond the two-year period because of that, he was still a lawful permanent resident (on a conditional basis) until December 4, 1988.

The applicant filed this application for lawful temporary resident status on February 12, 1988. Thus, he did not reside in the United States *in an unlawful status* from December 5, 1986 through February 12, 1988, the date of filing. He does not meet the temporary residence requirement of having resided unlawfully in the United States for the entire period of January 1, 1982 to February 12, 1988.

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). The applicant has failed to meet this burden.

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