

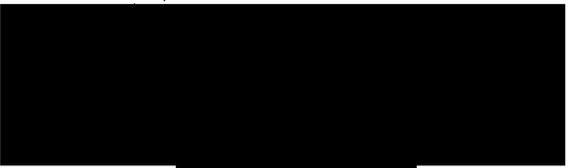
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**U.S. Citizenship
and Immigration
Services**

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FILE: [Redacted]
SRC-97-001-51530

Office: Texas Service Center

Date: MAR 29 2007

IN RE: Applicant: [Redacted]

APPLICATION: Application for Adjustment from Temporary to Permanent Resident Status 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, Chief
Administrative Appeals Office

DISCUSSION: The application for adjustment from temporary to permanent resident status in the legalization program was denied by the Director, Texas Service Center. It is now before the Administrative Appeals Office on appeal. The appeal will be rejected.

The director denied the application because the applicant failed to report to an office of Citizenship and Immigration Services (CIS) for fingerprinting.

On appeal, counsel indicated that a brief would be forthcoming within 30 days. However, more than a year later, no brief or other material has been received.

If an individual requested to appear for fingerprinting does not appear, the Service does not receive his or her request for rescheduling by the date of the fingerprinting appointment, or the applicant has not withdrawn the application, the application shall be considered abandoned and, accordingly, shall be denied. *See* 8 C.F.R. § 103.2(b)(13).

On July 7, 2005 the applicant was issued a notice advising him to report for fingerprinting at the CIS office in Tampa on July 21, 2005, or on any Wednesday in the next 90 days. The notice informed him that failure to be fingerprinted in that period might result in his application being considered abandoned pursuant to 8 C.F.R. § 103.2(b)(13). The applicant failed to comply, and the director, therefore, denied the application.

The regulation at 8 C.F.R. § 103.2(b)(15) states a denial due to abandonment may not be appealed, but an applicant may file a motion to reopen or reconsider under 8 C.F.R. § 103.5. Although the director advised the applicant that he could appeal, the denial was due to abandonment and cannot be appealed. Therefore, the appeal must be rejected.

Pursuant to 8 C.F.R. § 103.5(b), motions to reopen a proceeding or reconsider a decision under part 210 or 245a of this chapter, which are legalization proceedings, shall not be considered. Thus, while non-legalization applicants whose applications have been deemed abandoned may file motions to reopen or reconsider under 8 C.F.R. § 103.5, that is not true of legalization applicants.

ORDER: The appeal is rejected.