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FILE: [REDACTED]
MSC-04-324-10145

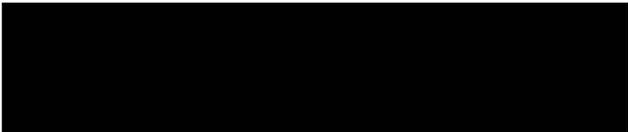
Office: NEWARK

Date: JAN 02 2008

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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has 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 "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for temporary resident status was denied by the Director, Newark District Office. 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), and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet. The director determined that the applicant failed to prove by a preponderance of the evidence that he has resided in the United States for the requisite periods, is admissible to the United States under the provisions of section 245A of the Act, and is otherwise eligible for adjustment of status under this section. Specifically, the director referenced inconsistencies in the information provided by the applicant and noted that affidavits he submitted failed to confirm that he resided in the United States during the requisite period.

On appeal, counsel for the applicant stated that the applicant hired an unaccredited representative who he believed to be an attorney to assist him in filing his application for temporary resident status. Counsel indicated that it was the ineffective assistance of the unaccredited representative that resulted in denial of the Form I-687 application. Counsel stated that the applicant would submit proper affidavits, as they were previously unavailable due to the ineffective assistance of the unaccredited representative. The applicant provided no additional evidence or explanation to overcome the reasons for denial of his application. Specifically, the applicant did not address the inconsistencies in his application that were identified by the director. Counsel indicated the applicant would submit additional evidence and he would submit a brief within 30 calendar days of filing his appeal. More than 18 months have passed since the appeal was filed, and the applicant has failed to submit a brief or additional evidence. Therefore, the record will be considered complete. The applicant provided no additional evidence or explanation to overcome the reasons for denial of his application.

It is noted that any appeal or motion based upon a claim of ineffective assistance of counsel requires: (1) that the claim be supported by an affidavit of the allegedly aggrieved applicant setting forth in detail the agreement that was entered into with counsel with respect to the actions to be taken and what representations counsel did or did not make to the applicant in this regard, (2) that counsel whose integrity or competence is being impugned be informed of the allegations leveled against him and be given an opportunity to respond, and (3) that the appeal reflect whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of counsel's ethical or legal responsibilities, and if not, why not. *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988).

Although counsel notes that the applicant was not assisted by an attorney but by an agent, there is no remedy available for an applicant who assumes the risk of authorizing an unlicensed attorney or unaccredited representative to undertake representations on his or her behalf. *See* 8 C.F.R. § 292.1. The AAO only considers complaints based upon ineffective assistance against accredited representatives. *Cf. Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d

10 (1st Cir. 1988)(requiring an appellant to meet certain criteria when filing an appeal based on ineffective assistance of counsel).

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 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 grounds stated for denial. The appeal must therefore be summarily dismissed.

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