

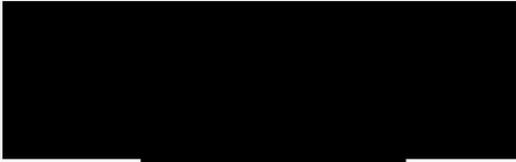


U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
XPW-90-192-0950

Office: SAN FRANCISCO

Date: **MAR 03 2009**

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: Self-represented

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 if your case was remanded for further action, you will be contacted.

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The application for adjustment from temporary resident status to permanent resident status was denied by the Director, San Francisco. It is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant failed to report for a scheduled interview on October 30, 2006.

On appeal, the applicant states that he did not receive notice of the interview scheduled for October 30, 2006, and requests a second opportunity for an adjustment interview. The applicant states that he will submit a brief within 30 days. To date, nothing further has been received into the record. The record is complete and ready for adjudication.

The regulation at 8 C.F.R. § 245a.3(e) states in pertinent part:

Each applicant shall be interviewed by an immigration officer, except that the adjudicative interview must be waived for a child under 14, or when it is impractical because of the health or advanced age of the applicant. An applicant failing to appear for the scheduled interview may, for good cause, be afforded another interview. Where an applicant fails to appear for two scheduled interviews, his or her application shall be held in abeyance until the end of 43 months from the date the application for temporary residence was approved and adjudicated on the basis of the existing record.

The applicant filed the application to adjust status from temporary to permanent resident (Form I-698) on June 29, 1990. The record reflects that United States Immigration & Naturalization Services (USCIS) sent the applicant an interview notice at his address of record to appear for an interview on October 30, 2006. The applicant failed to appear, and on April 10, 2007, the director denied the Form I-698 application because the applicant failed to appear for the adjustment interview.

On appeal, applicant cites the regulation at 8 C.F.R. § 245a.3(e) and states that the director erred in not sending a second interview notice. The regulation, however, states that an applicant may be scheduled for a second interview if his failure to appear for the first interview is for good cause. While the applicant states he did not receive the interview notice, he did not submit a sworn declaration to that effect. The record shows that the interview notice was mailed to the applicant at his address of record, and contains no indication that the interview notice was returned as undeliverable. The AAO finds that the applicant was notified of the interview, failed to appear, and failed to establish good cause for his failure to appear.

The applicant has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite period, is admissible to the United States under the provisions of section 245A of the Act, and is otherwise eligible for adjustment of status. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.2(d)(5). The sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6).



On appeal, the applicant has failed to establish by a preponderance of the evidence that the director erred in denying the Form I-698 on the basis of his failure to appear for the scheduled interview. Therefore, he is ineligible for permanent residence in the legalization program.

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