

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

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

L1



FILE: [Redacted]
XSI-88-174-3050

Office: CALIFORNIA SERVICE CENTER

Date: APR 01 2010

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:

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 remanded for further action, you will be contacted.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The termination of the applicant's temporary resident status by the Director, California Service Center is before the Administrative Appeals Office on appeal. The appeal will be dismissed.

On May 21, 1992, the applicant was granted temporary resident status. On September 14, 1992, the record indicates that United States Citizenship and Immigration Services (USCIS) received a date stamped Form I-698 application to adjust from temporary to permanent resident status. This filing has been reviewed by the AAO and the application is deemed timely filed.

However, the AAO conducts a *de novo* review, evaluating the sufficiency of the evidence in the record according to its probative value and credibility as required by the regulation at 8 C.F.R. § 245a.2(d)(6). The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) (“On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.”); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO’s *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

In reviewing the termination of the applicant’s temporary resident status, the AAO noted facts which seriously compromise the credibility of the applicant’s claims. On January 15, 2010 the AAO issued a Notice of Intent to Deny (NOID) giving the applicant an opportunity to address the absence of final dispositions of charges noted in the record of proceedings before the AAO. The applicant was given 30 days to respond to the NOID.

In the NOID, the AAO noted that the record of proceedings indicates that the applicant had been arrested on two separate occasions, on April 23, 1986 and February 21, 1992 for three counts of violating California Penal Code 20002A *Hit and Run Property Damage*. The final court dispositions for these arrests have not been submitted. Section 245A(b)(2) of the Act states that temporary resident status can be terminated if it appears that the alien was in fact, not eligible for such status. In accordance with the regulation at 8 C.F.R. § 245a.2(k)(5), failure to assist the Service in verifying information necessary for the adjudication of the application, such as a criminal record, may result in a denial of the application.

The applicant failed to respond to the NOID within the requested time frame. The applicant was advised that failure to respond to the NOID may result in a dismissal of the appeal. Since the AAO has not received any response to the NOID, and the applicant has failed to establish his eligibility for the benefit sought, the appeal is hereby dismissed.

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