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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**

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[Redacted]

FILE: [Redacted]
XHO 88 082 04118

Office: CALIFORNIA SERVICE CENTER

Date: APR 07 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.

IN BEHALF OF APPLICANT:

[Redacted]

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.

A handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application for temporary resident status was denied by the Director, California Service Center and the matter is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded for further consideration and action.

The application was denied because the applicant failed to report for fingerprinting, and therefore, United States Citizenship and Immigration Services (USCIS) (formerly the Immigration and Naturalization Service or the Service) is unable to determine eligibility.

On appeal, the applicant's most current counsel asserts that the applicant has maintained the same address for a number of years but never received a notice informing him to appear for fingerprinting from United States Citizenship and Immigration Services (USCIS) (formerly the Immigration and Naturalization Service or the Service).

An applicant for temporary resident status 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 Immigration and Nationality Act (Act), 8 U.S.C. § 1255a(a)(2).

An applicant for temporary resident status under section 245A of the Act has the burden to establish by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, is admissible to the United States and is otherwise eligible for adjustment of status under this section. 8 C.F.R. § 245a.2(d)(5).

An applicant for temporary resident status must present documents establishing proof of identity, proof of residence, and proof of financial responsibility, as well as photographs, a completed Fingerprint Card (Form FD-258), and a fully completed Medical Examination for Aliens Seeking Adjustment of Status (Form I-693). 8 C.F.R. § 245a.2(d).

The applicant did furnish a completed Fingerprint Card when he filed his application in 1988. Nevertheless, the validity period of such fingerprint check has since expired. The Director, California Service Center, attempted to send notices via certified mail to the applicant and his prior counsel at each of their respective addresses of record on February 28, 2008, advising the parties that the applicant needed to report to the Van Nuys, California office of USCIS on March 11, 2008 for fingerprinting. However, a review of the notice sent to the applicant's former counsel reveals that this notice was addressed in a confusing and incorrect manner. Consequently, the previous denial shall be withdrawn in order to allow the applicant another opportunity to appear at a USCIS office for fingerprinting.

In addition, a review of the record reveals the following regarding the applicant's criminal history:

- An arrest on May 4, 1983 by the Los Angeles, California Police Department for a violation of section 243(A), Battery on a Person, of the California Penal Code in case [REDACTED]
- An arrest on May 14, 1984 by the Los Angeles, California Police Department for a violation of section 470, Forgery, of the California Penal Code in case # [REDACTED]
- An arrest on July 12, 1986 by the Los Angeles, California Police Department for a violation of section 647(B), Disorderly Conduct-Prostitution, of the California Penal Code in case [REDACTED] with a subsequent conviction on August 27, 1986 for a misdemeanor violation of section 647(B), Disorderly Conduct-Prostitution, in the Municipal Court of Los Angeles County.

The record is absent documentation (including correspondence dated March 17, 2010 from the Los Angeles, California Police Department that was received by the AAO prior to the issuance of this decision) showing the disposition of criminal charges arising from his arrests on May 4, 1983 and May 14, 1984. Therefore, the applicant shall be afforded the opportunity to submit documentation to show the disposition of these criminal charges.

Furthermore, the applicant shall also be afforded the opportunity to submit additional documentation in support of his claim of continuous unlawful residence in the United States since prior to January 1, 1982 such as Social Security Administration earnings records, copies of his passport, etc.

The case is remanded for the purpose of sending the applicant and his current attorney a fingerprint notification form, and affording the applicant the opportunity to comply with its requirements. Additionally, the director shall allow the applicant to submit documentation relating to his criminal history and claim of residence in this country for the requisite period. Thereafter, the director will render a new decision. Should the decision be adverse, the director must give written notice setting forth the specific reasons for the denial pursuant to 8 C.F.R. § 103.3(a)(1)(i), and the applicant shall be permitted to file an appeal without a fee. Additionally, the director may certify the decision to this office.

ORDER: The case is remanded for appropriate action and decision consistent with the foregoing.