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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  
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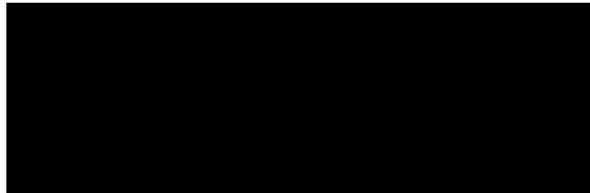


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XPN-90-077-00213

Office: NEBRASKA SERVICE CENTER

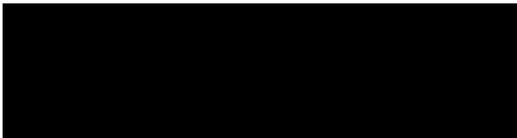
Date: **MAR 03 2010**

IN RE: Applicant:



APPLICATION: Application for Adjustment from Temporary to Permanent Resident Status under 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. 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.

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Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The application for adjustment to permanent resident status was denied by the director of the Northern Regional Processing Facility. An appeal was filed, and the matter was then remanded by the Legalization Appeals Unit. The application was then reopened and denied by the director of the Nebraska Service Center. The application was then forwarded to the Administrative Appeals Office (AAO), which again remanded the matter. The application was again reopened and denied by the director of the Nebraska Service Center. The decision is again before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The application was initially denied because of the applicant's criminal record. On appeal, the applicant established that his one misdemeanor conviction did not disqualify him for permanent residence. The application was, therefore, reopened, and later denied because the applicant failed to report for fingerprinting. On appeal, the AAO determined that the fingerprint notice contained several errors: the notice contained an error for the date of fingerprinting, the notice did not contain the applicant's last known address, and a copy of the notice was not forwarded to counsel of record. The application was, therefore, reopened, and later denied because the applicant failed to report for fingerprinting and failed to submit any additional evidence to otherwise establish his eligibility for permanent residence.

Title 8, Code of Federal Regulations 245a.3(b) states in part:

*Eligibility.* Any alien who has been lawfully admitted for temporary resident status under section 245A(a) of the Act, such status not having been terminated, may apply for adjustment of status to that of an alien lawfully admitted for permanent residence if the alien:

- (1) Applies for such adjustment anytime subsequent to the granting of temporary resident status but on or before the end of 43 months from the date of actual approval of the temporary resident application...
- (2) Establishes continuous residence in the United States since the date the alien was granted such temporary residence status...
- (3) Is admissible to the United States as an immigrant, except as otherwise provided in paragraph (g) of this section; and has not been convicted of any felony, or three or more misdemeanors; and
- (4)(i)(A) Can demonstrate that the alien meets the requirements of section 312 of the Immigration and Nationality Act, as amended (relating to minimal understanding of ordinary English and a knowledge and understanding of the history and government of the United States)...

In addition, Title 8, Code of Federal Regulations 245a.3(e) states in part:

*Interview.* Each applicant, regardless of age, must appear at the appropriate Service office and must be fingerprinted for the purpose of issuance of Form I-551...

As of March 29, 1998, applicants filing Form I-698, Application to Adjust Status from Temporary to Permanent Resident, are required to be fingerprinted at a United States Citizenship and Immigration Services (USCIS) Application Support Center (ASC), or approved designated law enforcement agency.

On June 4, 2008, an ASC appointment notice was sent to the applicant at his last known address, in order to have the applicant fingerprinted. A copy of the notice was forwarded to counsel of record for the applicant. The applicant's notice was returned as undeliverable. The applicant has not been fingerprinted.

In the director's decision, the applicant was informed that the application could not be approved because he had failed to comply with the requirement that he be fingerprinted. The applicant has failed to comply with the fingerprinting requirement, and has failed to submit any additional evidence to establish that he has satisfied this requirement. Since this requirement may not be waived, the applicant is ineligible for adjustment from temporary to permanent resident status.

The applicant has not established that he has complied with the requirements for adjustment of status under 8 C.F.R. § 245a.3. The applicant is therefore ineligible for permanent resident status.

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