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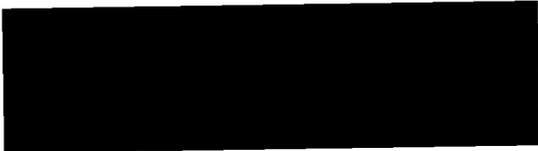
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529 - 2090



U.S. Citizenship  
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FILE: [REDACTED] Office: LAGUNA NIGUEL Date: MAR 18 2010  
XPH-88-128-02060

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. 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 application for temporary resident status was denied by the director of the Laguna Niguel office, and 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), on March 9, 1988. The director denied the application, finding that the applicant had not established by a preponderance of the evidence that he entered the United States as a nonimmigrant prior to January 1, 1982, and that his authorized stay expired before such date or that he violated the terms of his nonimmigrant status in a manner known to the Government as of January 1, 1982. Specifically, the director found that the applicant did not satisfy the requirements of the Northwest Immigrant Rights Project (NWIRP) settlement agreement, because the evidence established that the applicant, who was an F-1 student, entered the United States on June 10, 1980 with an F-1 nonimmigrant visa valid until June 9, 1981, and that the applicant's status was extended twice, on August 30, 1982 and on August 20, 1983, respectively.

In his brief on appeal, counsel for the applicant asserts that the applicant states that he violated the terms of his nonimmigrant status by engaging in unauthorized employment in 1981, because he worked for an employer on a cash basis.<sup>1</sup> A review of the record does not reveal that the applicant previously asserted that he worked without authorization prior to January 1, 1982. The testimony of an attorney for a party is not per se incompetent. However, courts are reluctant to allow attorneys to testify except when necessary, *i.e.*, all other sources of relevant evidence have been exhausted. *United States v. Armedo-Sarmiento*, 545 F.2d 785 (2d Cir. 1976); *United States v. Johnston*, 664 F.2d 152 (7th Cir. 1981); *United States v. Buckhanon*, 505 F.2d 1079 (8th Cir. 1974); *United States v. West*, 680 F.2d 652 (9th Cir. 1982); *see United States v. Edwards*, 154 F.3d 915, 921 (9th Cir. 1998) (discussing advocate-witness rule in case in which during trial prosecutor found evidence in presence of two police officers who then testified about prosecutor's discovery). The I-687 lists the applicant's first "employment" in the United States as a "student" from August 1981 to June 1985, and states that the applicant did not receive any annual or hourly wages during that period. Further, on appeal the applicant has not submitted a statement or documents to support counsel's assertion. Therefore, since all other sources of relevant evidence have not been exhausted, the AAO finds that counsel's testimony is not necessary.<sup>2</sup>

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.

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<sup>1</sup> Counsel does not assert that the applicant's violation of status was known to the Government as of January 1, 1982.

<sup>2</sup> Counsel for the applicant also asserts that the director committed an error in not considering the exceptional and extremely unusual harm to the applicant which would result if the application were denied. Counsel cites three cases involving applications for cancellation of removal. However, unlike the adjudication of those applications, the determination of an applicant's eligibility for temporary residence does not involve a consideration of any resultant hardship if the application were denied. Counsel has not cited any statute or regulation in support of his assertions.

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 addressed the grounds stated for denial, nor has he presented additional evidence relevant to the grounds for denial or the stated reason for appeal. The appeal must therefore be summarily dismissed.

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