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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals (AAO)
20 Massachusetts Ave., N.W. MS 2090
Washington, DC 20529 - 2090

U.S. Citizenship and Immigration Services

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[redacted]

Date: JUL 0 6 2012 Office: CHICAGO FILE: [redacted]

IN RE: Applicant: [redacted]

APPLICATION: Application to Adjust Status 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:

[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.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application to adjust status from temporary to permanent resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a, was denied by the director of the Chicago district office and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application, finding that the applicant failed to establish that he satisfied the "basic citizenship skills" required under 8 C.F.R. § 245a.3(b)(4). On October 30, 2009, the AAO sustained the applicant's appeal, returning the case for the director to continue the adjudication of the application, finding that the applicant had overcome the particular basis of denial cited by the director by submitting evidence of his having passed the proficiency test for legalization, called the IRCA Test for Permanent Residency.[1] On December 14, 2011, the director denied the application, finding that the applicant had not established that he maintained continuous residence in the United States from the date of approval of temporary resident status until the date of filing for adjustment to permanent residence.

On appeal, the applicant has not submitted any further evidence.[2] Counsel asserts that the evidence previously submitted by the applicant establishes that the applicant continuously resided in the United States from the date of approval of temporary resident status the date of filing for adjustment to permanent residence.

An alien shall be regarded as having resided continuously in the United States for the purpose of this part if, at the time of applying for adjustment from temporary to permanent resident status, or as of the date of eligibility for permanent residence, whichever is later, no single absence from the United States has exceeded thirty days, and the aggregate of all absences has not exceeded ninety days, between the date of approval of the temporary resident application, Form I-687, and the date the alien applied or became eligible for permanent resident status, whichever is later, unless the alien can establish that due to emergent reasons or circumstances beyond his control, the return to the United States could not be accomplished within the time period(s) allowed. A single absence from the United States of more than 30 days, and aggregate absences of more than 90 days during the period for which continuous residence is required for adjustment to permanent residence, shall break the continuity of such residence, unless the temporary resident can establish that he did not, in fact, abandon his residence in the United States during such period. 8 C.F.R. § 245a.3(b)(2).

Pursuant to the above regulation, the period in question in terms of absences is from the date of approval of temporary residence (November 6, 1991 in this case) until the date of filing for

[1] On appeal, the applicant submitted a copy of a document, dated September 2, 1992, which states that the applicant passed a test administered by Private Immigration Agency, Inc. in Chicago, Illinois. The Private Immigration Agency was a qualified designated entity authorized to administer the test. A review of the record reveals an additional copy of this document, as well as an original document, dated September 2, 1992, showing that the applicant passed an IRCA Test for Permanent Residency.

[2] The evidence which the applicant has submitted on appeal has previously been submitted into the record, including the applicant's affidavit regarding his absences from the United States.

adjustment to permanent residence (November 24, 1992)[3] or the date the applicant became eligible for permanent resident status (June 6, 1993), whichever is later. That last figure reflects the applicant's eligibility for permanent residence beginning nineteenth months from the date of approval of temporary resident status, pursuant to section 245A(b)(1)(A) of the Act, 8 U.S.C. § 1255a(b)(1)(A). Thus, the period in question in this case is from November 6, 1991 to June 6, 1993. The AAO notes that the director's decision erroneously stated that the period in question in this case is from November 6, 1991 to September 14, 1992, therefore, this portion of the director's decision is withdrawn.

The record contains documents regarding the applicant's residence in the United States during the period in question as follows: a contract, in both English and Spanish, signed by the applicant on August 19, 1992, retaining [redacted] in Chicago, Illinois to assist the applicant in preparing and filing the I-698 application; the I-698 application signed by the applicant on August 19, 1992; a document dated September 2, 1992, which states that the applicant passed an IRCA Test for Permanent Residency administered by [redacted], a letter dated October 20, 1992 addressed to the applicant, returning the applicant's filing fee for the I-698 application, and requesting a fee in the proper amount of $80.00; a copy of a money order dated November 17, 1992 payable to "INS" in the amount of $80.00 listing the applicant's name as remitter, and a copy of the transmittal envelope sent by the applicant to the INS postmarked the same date.[4] These documents are some evidence in support of the applicant's continuous residence in the United States from August to November 1992.[5]

At the time of filing the I-698 application, the applicant did not list any absences from the United States during the period in question. At the time of his interview on May 13, 2010, the applicant amended the I-698 application to list one absence during the period in question, from September 1992 to June 1993 for a vacation to Mexico, and listed his total days absent as "6 months." [6] Part 22 of the I-698 application reflects that on the date of the interview the applicant again signed the I-698 application, certifying that the amended information contained therein is true and correct

In an affidavit dated January 5, 2011, the applicant listed one absence from the United States during the period in question, an absence not exceeding 30 days from March to April 1993 to get married.

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[3] The decision of the director incorrectly states that the I-698 application was filed on September 14, 1992, when the record reflects the application was filed with the proper fee on November 24, 1992.

[4] The record reveals the applicant was scheduled for interviews on the I-698 application on April 28 and June 16, 1993, respectively, for which he failed to appear. The record also contains envelopes sent by the predecessor Immigration and Naturalization Service (INS) to the applicant at his address of record, with postmarks dated March 19, 1993, May 14, 1993 and May 24, 1993. The envelopes were returned with the notation "forwarding order expired." Thus, it does not appear that the applicant continuously maintained a mailing address in this country during the period in question. The applicant, therefore, has not submitted any evidence that he did not, in fact, abandon his residence during such absence.

[5] The record contains a statement of earnings from the Social Security Administration, but no earnings are listed for the applicant prior to 1994.

[6] The AAO notes that the applicant's amended testimony is incongruous regarding the length of his absence from the United States during the period in question, since the period from September 1992 to June 1993 is nine months.

The applicant also stated that he departed the United States "after receiving my temporary residence card." As noted above, the I-687 application was approved on November 6, 1991.[7]

The record also contains two letters from [redacted], dated November 15, 2010 and March 24, 2011, respectively. In the 2010 letter, the witness states that the applicant "has been employed here since the early 1980's." In the 2011 letter, the witness states that the applicant has been working for [redacted] "since 1998 with one interruption and to the best of my memory has been with us since early 1992 with some interruptions under different management." The statements of the witness are incongruous. In addition, the statements of the witness are inconsistent with the statement of the applicant in the I-687 application filed by him in 2005 that he worked for [redacted] from 1980 to 1994, and since March 3, 2000. There are material inconsistencies regarding the dates of the applicant's employment in the United States during the period in question.

The AAO finds that the applicant has not established that he maintained continuous residence in the United States from the date of approval of temporary residence until the date the applicant became eligible for permanent resident status. The evidence supports a conclusion that the applicant was absent from the United States from late 1992 to June 1993, for a period in excess of 90 days. As stated above, a single absence from the United States of more than 30 days, and aggregate absences of more than 90 days during the period for which continuous residence is required for adjustment to permanent residence, in the absence of an "emergent reason"[8], shall break the continuity of such residence, unless the temporary resident can establish that he did not, in fact, abandon his residence in the United States during such period. The applicant has not submitted any evidence of an "emergent reason" that prevented his return to the United States after his departure in 1992. In addition, as stated above, it appears from the evidence in the record that the applicant did, in fact, abandon his residence during such absence.

The applicant has failed to establish by a preponderance of the evidence that he maintained continuous residence in the United States during the period in question, as required under 8 C.F.R. § 245a.3(b)(2). The applicant is, therefore, ineligible for adjustment to permanent resident status under section 245A of the Act on this basis.

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

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[7] In 2005 the applicant filed a second I-687 application, in which he did not list any absences from the United States.

[8] "Emergent reason" has been defined as "coming unexpectedly into being." *Matter of C,* 19 I&N Dec. 808 (Comm. 1988).