



**U.S. Citizenship  
and Immigration  
Services**

(b)(6)

Date: **JAN 29 2014** Office: DETROIT

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:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

If your appeal was dismissed, 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.

Thank you.

for  
Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Detroit Field Office Director denied the Form I-687, Application for Status as a Temporary Resident Under Section 245A of the Immigration and Nationality Act, filed pursuant to the terms of the settlement agreements reached in the *Northwest Immigrant Rights Project, et al. vs. U.S. Citizenship and Immigration Services, et al.*, 88-CV-00379 JLR (W.D. Was.) (NWIRP). The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The AAO maintains plenary power to review this matter 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, Soltane v. DOJ*, 381 F.3d 143, 145 (3<sup>rd</sup> Cir. 2004). The federal courts have long recognized the AAO’s *de novo* review authority. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). The AAO considers all pertinent evidence in the record, including new evidence properly submitted on appeal.

The director found that the applicant failed to establish that he was admissible as he is subject to the two year foreign residency requirement.

On appeal, the applicant asserts he meets all of the conditions set forth in the NWIRP settlement agreement.

The AAO analyzed all the evidence in the record in accordance with the terms of the NWIRP settlement agreement when preparing this decision.

The sole issue before the AAO is whether the applicant established his admissibility. An alien applying for adjustment of status as a temporary resident pursuant to section 245A(a) of the Act and to NWIRP, must establish, *inter alia*, that he is admissible as an immigrant. *See* section 245A(a)(4)(A) of the Act, 8 U.S.C. § 1255A(a)(4)(A).

According to evidence in the record, the applicant entered the United States on June 26, 1977 on a non-immigrant J-1 exchange visitor’s visa as a post graduate medical trainee. The applicant was sponsored by the Educational Commission for Foreign Medical Graduates. He is subject to the two year foreign residence requirement because his skill is on the Exchange Visitor skills list and he received government financing. The applicant filed a Form I-612, Application for Waiver of the Foreign Residence Requirement. The California Service Center Director denied the application in conjunction with an unfavorable recommendation by the Department of State.

As the grounds of inadmissibility have not been waived, the applicant is not admissible and is ineligible for legalization benefits. Accordingly, the applicant's appeal will be dismissed.

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