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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
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FILE:

MSC-07-255-11416

Office: LOS ANGELES

Date:

JAN 25 2010

IN RE:

Applicant:

APPLICATION: Application to Adjust Status From Temporary to 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:

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 Los Angeles Director terminated the applicant's temporary resident status and subsequently denied the applicant's request to adjust from temporary to permanent resident status. The decision 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). The Form I-687 was approved. Subsequently the applicant filed a Form I-698, Application to Adjust from Temporary to Permanent Residence. The director determined that the applicant had not established by a preponderance of the evidence that he had continuously resided in the United States in an unlawful status since prior to January 1, 1982, and for the duration of the requisite period and issued a Notice of Intent to Terminate (NOIT). The director noted that the applicant on two separate occasions testified under oath, and in writing that he entered the United States in 1980, left the country in October 1986, and remained out of the country for about a year. The director terminated the applicant's temporary resident status, finding that the applicant had not met his burden of proof and that he was therefore not eligible to adjust from temporary resident status pursuant to Section 245A of the Act. The director subsequently denied the applicant's Form I-698 based upon the termination of his temporary resident status.

On appeal, the applicant asserts that he was coerced into making incorrect statements by the interviewing officer, and that in fact, he was only absent from the United States from October 1986 to November of 1986. He also asserts that he went to Mexico to take care of his father who was ill. The applicant does not submit any new evidence on appeal.

The regulation at 8 C.F.R. § 245a.2(u)(1)(i) prescribes that the status of an alien lawfully admitted for temporary residence under section 245A(a)(1) of the Act may be terminated at any time if "[i]t is determined that the alien was ineligible for temporary residence under Section 245A of this Act[.]" The applicant bears the burden to 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 Act, 8 U.S.C. § 1255a(a)(2). The applicant must also establish that he or she has been continuously physically present in the United States since November 6, 1986. Section 245A(a)(3) of the Act, 8 U.S.C. § 1255a(a)(3).

The record in this case shows that the applicant was granted temporary resident status under section 245A(a)(1) of the Act. However, the applicant admitted to being absent from the United States in October 1986 for approximately one year. The affidavits submitted in response to the Notice of Intent to Terminate the applicant's temporary residence status is insufficient to overcome the basis for termination. In the instant case, the applicant's temporary resident status was properly terminated pursuant to section 245A(b)(2) of the Act and the corresponding regulation at 8 C.F.R. § 245a.2(u)(1)(iv). On appeal, the applicant failed to overcome the director's basis for

termination of his temporary resident status.¹ As the applicant no longer had temporary resident status the Form I-698, Application to Adjust Status From Temporary to Permanent Resident was properly denied. Accordingly, the appeal in this matter will be dismissed.

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

¹ The appeal of the director's termination of the applicant's temporary resident status has been dismissed, receipt # MSC-06-101-16885.