



U.S. Citizenship
and Immigration
Services

L-1



AUG 03 2004

FILE:



Office: CALIFORNIA SERVICE CENTER

Date:

IN RE:

Applicant:



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:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. 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.

Robert P. Wiemann, Director
Administrative Appeals Office

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DISCUSSION: The termination of the applicant's temporary resident status by the Director, California Service Center is before the Administrative Appeals Office on appeal. The appeal will be sustained.

The director terminated the applicant's temporary resident status because the applicant apparently failed to file the application for adjustment of status from temporary to permanent residence within the 43-month application period.

In response to the Notice of Intent to Terminate, and on appeal, the applicant states the Immigration and Naturalization Service (INS, now Citizenship and Immigration Services, or CIS) rejected her first, timely application for permanent residence because, according to INS, the application for *temporary residence* had not yet been granted. She asserts she was then told by an INS employee that she should await word from the agency as to when to apply for permanent residence.

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 the alien fails to file for adjustment of status from temporary to permanent resident on Form I-698 within forty-three (43) months of the date he/she was granted status as a temporary resident. See 8 C.F.R. § 245a.2(u)(1)(iv).

According to some of the ADP printouts in the record which relate to the temporary residence application, the applicant was granted temporary resident status on January 14, 1988. The director construed that to be the date of approval of temporary residence. The 43-month eligibility period for filing for adjustment would have expired on August 14, 1991. The Application for Adjustment of Status from Temporary to Permanent Resident (Form I-698) that the director denied was received by INS on December 29, 1999 and fee-registered on March 14, 2000. The director therefore denied the untimely Form I-698 application, and subsequently terminated the applicant's temporary resident status.

However, the record also contains other ADP printouts which do not show the approval of temporary residence in 1988. These printouts, also relating to the temporary residence application, indicate an "intent to terminate notice" was issued on January 25, 1989, and that an "intent to deny notice" was issued on June 26, 1989. Not only is this sequence not logical, because terminations only relate to approved cases and denials can only occur when applications have not been approved, but the printouts also show the application was *granted* on June 26, 1989. Furthermore, these printouts show that, later, on December 12, 1989 and May 18, 1990, the applicant was requested to provide *additional* evidence, which would not have been required if the application had been granted June 26, 1989. These printouts are clearly not internally consistent, and contradict the other printouts which show the January 14, 1988 date of approval.

The application for temporary residence contains block #64, in which the adjudicating officer is to indicate whether the application is granted or denied. That block was not completed in this case. Also, the record does not contain a file copy of a notice to the applicant advising her of approval of temporary residence.

The record contains an actual Notice of Intent to Deny dated June 16, 1989, ten days before the June 26 date noted above, explaining that the applicant needed to provide more evidence before her application for temporary residence could be approved. The applicant's response was not received by the director until July

17, 1989. Even if the director decided to grant the application based on the response, and there is no evidence of that, the approval could not have taken place on June 26, 1989 as the printout states. The most logical conclusion would be that the dates of approval shown on the printouts, January 14, 1988 and June 26, 1989, are questionable if not erroneous, given the fact that the director was still adjudicating the application when he solicited more documents on June 16, 1989. While the ADP entries are simply part of a tracking system, and mistakes can be made when data is entered, the actual documents in the record, such as the June 16, 1989 notice requesting additional documentation, reflect the actual actions taken in a case.

The applicant filed an application for an extension of her employment authorization on May 4, 1995. (On appeal, the applicant, evidently confused, refers to this as an application for adjustment to permanent residence.) INS granted the application, and an employee wrote on it "granted 6/26/89" and also "Please adjudicate case." The second note seems to signify that the employee realized the records were still confusing and that remedial action was necessary.

Another note in the record by an INS employee, dated March 2, 2000, states "Claims Mainframe does not have the I-687 approval" This note meant that the main ADP tracking system did not show that the application for temporary residence had been granted.

With her Form I-698 permanent residence application that she submitted in December 1999, the applicant attached a note stating "I was advised by an officer of the INS to file this application, despite the fact that my temporary resident status is not final." This is further evidence that the temporary residence application was still showing as "pending" in at least some INS records.

Thus, there are numerous indications that the INS records from June 16, 1989 until March 2, 2000 were contradictory, and that INS employees were reading data that indicated that the temporary resident application was still pending, and were transmitting that information to the applicant.

Upon receiving the June 1, 2002 notice of intent to terminate, which pointed out her Form I-698 filed in 1999 was years late, the applicant provided a photocopy of a Form I-698 completed by her on September 17, 1989 and a return notice from the director regarding that application which indicated that a final decision had not been made on her temporary residence application.

In the termination notice, the director stated INS had no records of any Form I-698 having been filed by the applicant until the one which was completed in December 1999 and fee-registered in March 2000. As the original 1989 Form I-698 was returned to the applicant, seemingly because she was not eligible to file it, it would seem likely that there would not be any records in INS of it. More importantly, the records in this case are so contradictory that the fact that the applicant's claims may not be buttressed by INS records certainly cannot be held against her.

In this case, the records are so contradictory and unclear regarding a grant of temporary residence that it cannot be determined when the 43-month period within which the applicant was to file for adjustment should be considered to have begun. Even if there were a firm date from which to calculate the 43-month period, it is clear that the applicant was provided misleading information detrimental to her opportunity to

apply within the 43-month period. In light of the conflicting data, and the actions taken by INS in this case, the premise that the applicant can be held responsible for failing to file for adjustment within 43 months of January 14, 1988 cannot be supported. It is noted that the particular circumstances of this case dictate such a decision. It is not concluded that every applicant claiming lack of notice or confusion concerning the grant of temporary residence is relieved of his or her responsibilities.

ORDER: The appeal is sustained, and the termination of status is withdrawn. The director shall reopen and adjudicate the Form I-698 adjustment application.