



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: AUG 25 2004

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:

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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prevent clearly unwarranted
invasion of personal privacy

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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 dismissed.

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

On appeal, the applicant states that the Immigration and Naturalization Service (INS) did not advise him of the 43-month requirement when he was granted temporary resident status. He asserts that he was never advised of the requirement by INS employees on subsequent occasions when he would visit the office to acquire an extension of his employment authorization. The applicant further maintains that he never received a "warning notice" from INS regarding the need to file the application before the time ran out. He points out that he could not have complied with the requirement anyway because he was incarcerated. He finally explains that he has been fully incapacitated due to an automobile accident that took place after the 43-month period expired.

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. 8 C.F.R. § 245a.2(u)(1)(iv).

The applicant was granted temporary resident status on November 17, 1988. The 43-month eligibility period for filing for adjustment expired on June 17, 1992. The Application for Adjustment of Status from Temporary to Permanent Resident (Form I-698) was filed on August 17, 1998. The director therefore denied the untimely I-698 application, and subsequently terminated the applicant's temporary resident status.

The applicant claims that he did not apply for adjustment in a timely fashion because he had not been advised of the need to do so. However, INS and private voluntary organizations widely publicized the requirement of applying for adjustment to permanent residence within the requisite period. Notices were mailed to aliens' last known addresses informing them of the need to apply before the deadline. Furthermore, the original eligibility period of 31 months was extended to 43 months to better enable applicants to file timely applications.

Additionally, in this case, unlike some other cases, all INS computer records clearly and consistently show the date of approval of temporary residence. It does not seem that there would have been confusion on the part of INS employees in terms of advising him as to his status.

The applicant indicates that he was incarcerated for part of the 43-month period, and therefore would have been unable to apply for permanent residence even if he were aware of the requirement. However, the applications for permanent residence were submitted by mail, and therefore the applicant would not have been hindered from filing one, or having one filed on his behalf, while incarcerated.

The applicant has provided evidence of his incapacitation. Citizenship and Immigration Services is not without compassion for the applicant. His statements made on appeal have been considered. Nevertheless, there is no waiver available, even for humanitarian reasons, of the requirements stated above. The burden to file the adjustment application in a timely manner remains with the applicant. *See* 8 C.F.R. § 245a.3(d) As the applicant has not overcome the grounds for termination of status, the appeal must be dismissed.

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