



U.S. Citizenship
and Immigration
Services

41

[REDACTED]

FILE:

[REDACTED]

Office: CALIFORNIA SERVICE CENTER

Date:

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:

[REDACTED]

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

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, counsel stated the applicant filed a timely application for *permanent* residence in 1988. He indicated the applicant was granted *temporary* residence on May 3, 1988. He asserted the applicant filed a duplicate Form I-698, which is the application for permanent residence, on July 12, 2002. Counsel also requested a copy of the record. Although his request was complied with, nothing further was submitted other than photocopies of the applicant's temporary resident card, employment authorization card, and driver's license.

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 months of the date he/she was granted status as a temporary resident under § 245a.1 of this part. 8 C.F.R. § 245a.2(u)(1)(iv).

The applicant was granted temporary resident status on May 5, 1989. That was the actual date of approval, and, pursuant to 8 C.F.R. § 245a.3(b)(1), is the date from which the 43-month period is calculated. (Although the temporary resident card shows an "issue date" of May 3, 1988, that is the retroactive date that signifies the applicant actually applied for temporary residence on that date.) The 43-month eligibility period for filing for adjustment to permanent residence ran from May 5, 1989 to December 5, 1992. The Application for Adjustment of Status from Temporary to Permanent Resident (Form I-698) was first submitted on May 19, 2000, was returned and resubmitted, and was later fee-registered on July 12, 2001. The director therefore denied the untimely I-698 application, and subsequently terminated the applicant's temporary resident status.

Counsel asserts the applicant filed a Form I-698 application for permanent residence in 1998, and filed a duplicate on March 11, 2002. There is no evidence of such. Regardless, even an application filed in 1998 would have been late. The applicant did mistakenly file an Application to Replace Permanent Resident Card in 2002.

The Immigration and Naturalization Service (INS) and private voluntary organizations widely publicized the requirement of each individual applying for adjustment to permanent residence within the requisite period. It is noted that the original eligibility period of 31 months was extended to 43 months to better enable applicants to file timely applications. 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.