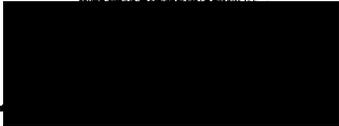


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Services

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FILE: 

Office: VERMONT SERVICE CENTER

Date: APR 11 2005

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:



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

DISCUSSION: The termination of the applicant's temporary resident status by the Director, Vermont 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 he was never advised of any deadline. However, he also mentions that he made payments to a group named [REDACTED] in 1994 in order for it to file the application on his behalf, and later found out that it illicitly cashed his money order and never filed the application with the Immigration and Naturalization Service (INS).

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 10, 1991. The 43-month eligibility period for filing for adjustment expired on December 10, 1994. The Application for Adjustment of Status from Temporary to Permanent Resident (Form I-698) was filed on November 25, 1996. The director therefore denied the untimely I-698 application, and subsequently terminated the applicant's temporary resident status.

On appeal, the applicant claims that he did not apply for adjustment in a timely fashion because he had not been properly advised of the need to do so. He provides affidavits from eight individuals supporting his claim. The wording of seven of the affidavits is virtually identical; the affiants indicate they were in constant contact with the applicant and know that he was not advised to file the adjustment application. One affiant states that he even went with the applicant to the INS office and heard the employee tell the applicant that everything was all right.

The applicant's contention that he was not properly advised when he appeared at the INS office simply cannot be confirmed by a review of the record. INS and private voluntary organizations did widely publicize the requirement of applying for adjustment to permanent residence within the requisite period. Furthermore, INS did send notices to aliens' last known addresses, specifically advising them of the requirement.

Unlike some applicants, the applicant does not claim that he was not notified as to the grant of temporary residence. He did receive his temporary resident card, which had an expiration date of June 13, 1993. Clearly, he knew that he was a temporary resident, and it would not seem likely that he would have thought that he did not need to take any action to acquire permanent residence.

The applicant indicates that he attempted to file the application through [REDACTED] in 1994. This appears to undercut his claim that he did not know that he had to file an application. As proof of his dealings with [REDACTED] he furnishes a photocopy of a money order to [REDACTED]. However, the money order seems to be dated July 28, 1996, which is long after the filing period. This raises questions regarding the credibility of his claim to have filed with [REDACTED] in 1994.

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).

The applicant's statements made on appeal have been considered. It is not apparent that the applicant was improperly advised by INS. 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.