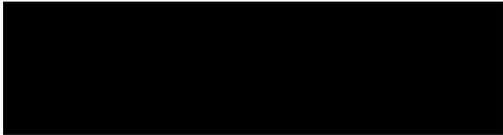




U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: California Service Center

Date: DEC 22 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, 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 of the applicant's record of convictions, and 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 insists that the expungements of the convictions should render the applicant eligible for lawful status. Counsel does not address the failure to file a timely adjustment application.

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 April 20, 1998. The 43-month eligibility period for filing for adjustment expired on November 20, 2001. The Application for Adjustment of Status from Temporary to Permanent Resident (Form I-698) was first submitted on April 22, 2003, and was later filed with the correct fee on June 3, 2003. The director therefore denied the untimely I-698 application, and subsequently terminated the applicant's temporary resident status.

In response to the earlier notice of intent to terminate, counsel explained that the applicant appeared at a local office of the Immigration and Naturalization Service (INS) before November 20, 2001 and requested the adjustment application. Although counsel stated that this occurred before November 20, 2001, he did not state exactly when this occurred. He indicated that the local office gave the applicant the wrong application, and further stated that the applicant was later told that the correct application would be mailed to him. Counsel concluded by stating that the application was never sent to the applicant, and that the next notice the applicant received was the notice of intent to terminate, well after the 43-month period had expired.

The contention that the applicant was given the wrong forms, and then was not sent the correct forms, simply cannot be confirmed by a review of the record. 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).

Although counsel did not address this issue on appeal, his statements made in response to the notice of intent to terminate 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). The applicant has not overcome this basis for termination of status.

Regarding the other issue examined by the director, the file reveals the following record of convictions:

1. Driving While License Suspended or Revoked, November 8, 1988;
2. Driving With a Blood Alcohol Content Above the Legal Limit, April 26, 1990;
3. Failure to Appear, July 2, 1990;