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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: FEB 23 21

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 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 explains that he filed a timely application on April 16, 1991.

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 9, 1988. The 43-month eligibility period for filing for adjustment expired on June 9, 1992. The Application for Adjustment of Status from Temporary to Permanent Resident (Form I-698) that is in the record was received on May 12, 1993. The director therefore denied the untimely Form I-698 application, and subsequently terminated the applicant's temporary resident status.

The applicant asserts that he filed an earlier Form I-698, on April 16, 1991. He provides a copy of a money order made out to the Immigration and Naturalization Service (the Service) on April 15, 1991 for \$85. The applicant states that the director sent the application back to him, asking for more money. He indicates that he sent the application back to the director pursuant to instructions.

There is no indication of that application having been filed in 1991 or anytime. There is no evidence, such as a postal receipt, of anything having been mailed to the Service in that time frame. The applicant has not provided a receipt for the filing of the application, or a rejection notice signifying the application was not accepted because it was incomplete or unaccompanied by the correct fee. (The money order *was* for an incorrect amount; the original fee for that application was \$80, but it was later raised to \$110.) The possibility exists that an application was submitted in 1991, and rejected due to improper fee. If that happened, the application was never returned to the Service for proper filing.

The applicant states that a long time passed after submitting that application, and when he inquired at a local Service office, it issued him several extensions (apparently of employment authorization) and advised him to wait. There is nothing in the record to support or refute this claim.

The application that was filed (untimely) in 1993 was returned to the applicant due to an incorrect fee. He resubmitted it promptly, and that is the late application that the director denied. It is possible that the applicant's references to having returned a rejected application to the director relate to this application.

The applicant's statements made on appeal have been considered. Nevertheless, there is not sufficient evidence available to conclude that he properly filed a timely application for adjustment to permanent residence. There is no waiver available, even for humanitarian reasons, of the requirement to have filed a timely application. As the applicant has not overcome the basis for termination of status, the appeal must be dismissed.

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