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U.S. Department of Homeland Security  
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Washington, DC 20529

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U.S. Citizenship  
and Immigration  
Services

L 1

[Redacted]

FILE:

[Redacted]

Office: TEXAS SERVICE CENTER

Date: JAN 03 2005

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, Texas Service Center is before the Administrative Appeals Office on appeal. The appeal will be sustained.

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 did not receive word when his temporary residence application was granted, and therefore did not know when the 43-month period began.

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. See 8 C.F.R. § 245a.2(u)(1)(iv).

The applicant was granted temporary resident status on October 23, 1989. The 43-month eligibility period for filing for adjustment expired on May 23, 1993. The Application for Adjustment of Status from Temporary to Permanent Resident (Form I-698) was filed on December 18, 1995. The District Director, Miami therefore denied the untimely I-698 application. That director improperly advised the applicant that he could appeal such decision, and the applicant filed an appeal. The Director, Texas Service Center subsequently terminated the applicant's temporary resident status. The center director later advised the applicant that the earlier denial of permanent residence by the district director was not appealable, and closed out that appeal. The appeal of the termination of temporary residence is, however, properly before this office.

The applicant states that he did not know that he was granted temporary residence on October 23, 1989 until he obtained a copy of his file under the Freedom of Information Act in December 1985. The record shows that the approval notice for temporary residence was sent in October 1989 to the address that the applicant showed on his temporary residence application, 1605 N.E. 126<sup>th</sup> Street, Apartment 9. However, just before the director granted that application, he advised the applicant to submit a waiver application, Form I-690. On that application, the applicant showed his new address as 1625 N.E. 126<sup>th</sup> Street, #5. Thus, the approval notice was not sent to the correct address, and the applicant's statement that he did not become aware of the grant until it was too late is credible.

The error in this case impacted on the applicant's ability to file a timely application for adjustment from temporary to permanent residence. Therefore, the premise that he can be held responsible for failing to file a timely application cannot be supported.

It is noted that the applicant, more recently, also applied for permanent residence under section 1104 of the Legal Immigration and Family Equity (LIFE) Act. That application remains pending. It does not appear that the applicant can qualify under that Act. Some aliens who did not apply timely for temporary residence (legalization) in the 1987-88 period filed later under class-action lawsuits, and it is those aliens who were eligible to subsequently apply under the LIFE Act. The applicant filed a *timely* application for legalization during the original filing period, and there is no evidence that he later applied for membership in a class-action lawsuit.

**ORDER:** The appeal of the termination of temporary residence in the legalization program is sustained, and the termination is withdrawn. The Director, Texas Service Center shall reopen the Form I-698 adjustment application and adjudicate it or, if necessary, forward it to the appropriate district office for adjudication. If the Form I-698 is not approved, the LIFE application must then be adjudicated.