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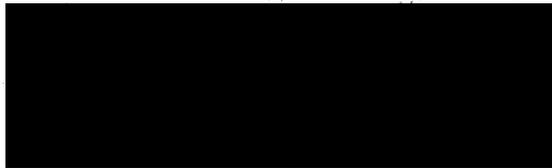
U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. A3042.  
Washington, DC 20529



U.S. Citizenship  
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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: JAN 03 2005

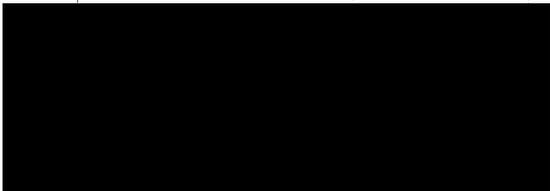
IN RE:

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.

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 stresses that the applicant was a minor who had no knowledge of the requirement and no legal capacity to understand the need to file a timely application. Counsel points out that the applicant relied on his mother to take care of these matters, and maintains that the Immigration and Naturalization Service (INS) should have informed the mother of the need to submit an application for the applicant. He also maintains that INS *was* required to advise aliens of the deadline whenever it encountered them, contrary to what the director stated in the termination notice.

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 August 12, 1993. 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 43-month eligibility period for filing for adjustment to permanent residence expired on March 12, 1997. The Application for Adjustment of Status from Temporary to Permanent Resident (Form I-698) was filed on May 15, 2000. The director therefore denied the untimely I-698 application, and subsequently terminated the applicant's temporary resident status.

Counsel asserts that INS should have advised the applicant's mother to file a separate application on behalf of the applicant. INS and private voluntary organizations widely publicized the requirement of *each individual* applying for adjustment to permanent residence within the requisite period. In neither the temporary residence application process nor the permanent residence application process was there a provision allowing one application to be filed on behalf of numerous family members. There is no indication that INS or the private organizations ever implied that there was such a provision. As the applicant's mother and the applicant filed separate applications in the initial temporary residence program, it would seem that the mother was aware of the need for separate applications for permanent residence as well. Furthermore, when the applicant did belatedly apply for permanent residence, he stated that his mother did not have the funds before for his application. Thus, it appears that the mother, if not the applicant, knew of the requirement. The burden to file the adjustment application in a timely manner remains with the applicant, or, in a case such as this, with a parent or guardian. *See* 8 C.F.R. § 245a.3(d).

Counsel disputes the director's statement that "the Service (INS) was not required to ensure that every temporary resident received notification to file a timely application." While INS could not *ensure* that every alien received word, because many aliens had moved and could not be contacted, counsel is correct in stating that INS was required to at least attempt to inform aliens of the need to file timely applications. INS did send warning notices to those who had not yet applied for permanent residence, advising them that the deadline was approaching. Counsel cites an INS cable which explains that, *when encountered*, an alien should be advised as to how much time he or she has left to file for permanent residence. In this case, it is not clear at all that INS encountered the applicant during the 43-month period and yet failed to advise him of the deadline. Anyway, pursuant to the above discussion, it is concluded that the applicant's mother was aware of the requirement that she file an application on behalf of the applicant.

The applicant's statements made on appeal have been considered. Nevertheless, there is no waiver available, even for humanitarian reasons, of the requirements stated above. 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.