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

LI



FILE:



Office: CALIFORNIA SERVICE CENTER

Date: **JAN 07 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:

Self-represented

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 states that he filed a timely application, but found out later that it had never been received by the Immigration and Naturalization Service.

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 March 27, 1989. The 43-month eligibility period for filing for adjustment expired on October 27, 1992. The Application for Adjustment of Status from Temporary to Permanent Resident (Form I-698) was first received on January 28, 1997. It was returned to the applicant, who later resubmitted it on May 25, 2001. The director therefore denied the untimely I-698 application, and subsequently terminated the applicant's temporary resident status.

On appeal, the applicant asserts that he filed a timely application before the deadline of October 27, 1992. However, there is simply no evidence of such filing or attempted filing in the record. The applicant has not provided a copy of any such application. It is noted that when he filed Form I-698 in 1997 he did not refer to any earlier application.

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. Nevertheless, there is no evidence to support the applicant's claim that he filed a timely application. 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.