



U.S. Citizenship
and Immigration
Services

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prevent clearly unwarranted
invasion of personal privacy**



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FILE:

Office: CALIFORNIA SERVICE CENTER

Date:

IN RE: Applicant:

JAN 25 2005

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

PUBLIC COPY

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 she filed a timely application. She asserts that, for a period of years, every time she inquired about her application at the local legalization office she was told to wait for an official response in the mail regarding such application. She explains that she was finally told that the Immigration and Naturalization Service (the Service) had no record of her having filed the application, and that she should file another one.

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 March 30, 1989. The 43-month eligibility period for filing for adjustment expired on October 30, 1992. The Application for Adjustment of Status from Temporary to Permanent Resident (Form I-698) was received on July 2, 2001. The director therefore denied the untimely Form I-698 application, and subsequently terminated the applicant's temporary resident status.

The applicant asserts she filed an earlier Form I-698. In response to a notice of intent to deny, she provided a photocopy of a Form I-698, purportedly signed on November 29, 1991. As stated by the director in the denial notice, there simply is no evidence of the filing of that application in 1991 or anytime. There is no evidence, such as a postal receipt, of anything having been mailed to the Service. 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. It is noted that the applicant showed the same address on the application dated November 29, 1991 as she showed on the application filed in 2001. Thus, it appears that if an application had been filed in 1991 and was sent back to the applicant because of a fee problem or any other problem, she would have likely received it. The possibility exists that an application was completed in 1991, but was never mailed.

The applicant's statements made on appeal have been considered. Nevertheless, there is not sufficient evidence available to conclude that she 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.