

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

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



U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY

21

[Redacted]

FILE:

[Redacted]

Office: CALIFORNIA SERVICE CENTER

Date: JAN 27 2007

IN RE:

Applicant:

[Redacted]

APPLICATION: Application for Temporary Resident Status under 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.

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 states that the applicant is indigent and elderly, and has severe medical problems. Earlier, in response to the notice of intent to deny, counsel stated that the applicant had failed to file a timely application, and asked that she be granted a waiver of that requirement.

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 April 13, 1989. The 43-month eligibility period for filing for adjustment expired on November 13, 1992. The record contains a file copy of a form letter to the applicant from the Director, Northern Regional Processing Facility, dated November 1, 1989. The letter explained that the applicant's Form I-698 application was incomplete, and directed the applicant to complete certain items and sign the application, and return it by mail to the facility. However, there is no indication that the applicant ever resubmitted that application to the facility, or any other office within the Immigration and Naturalization Service. That application is not in the record. On rebuttal to the notice of intent to deny, and on appeal, neither counsel nor the applicant has mentioned such application.

It is noted that, as the application had not been signed when it was first submitted, it was not properly filed. As stated in 8 C.F.R. 103.2(a)(7), an application or petition received in a Service office ... shall be regarded as properly filed when so stamped, *if it is signed and executed* and the required filing fee is attached.

The Application for Adjustment of Status from Temporary to Permanent Resident (Form I-698) that is in the record was first submitted on February 26, 2003. It was later filed with the correct fee on June 19, 2003. The director therefore denied that untimely Form I-698 application, and since there was no other approved or pending Form I-698 application that had been timely filed, terminated the applicant's temporary resident status.

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 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.