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U.S. Citizenship  
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FILE:



Office: CALIFORNIA SERVICE CENTER

Date:

**JUL 12 2005**

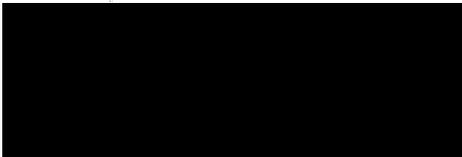
IN RE:

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.

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 he was never advised of the grant of temporary residence, or of any deadline for applying for permanent residence. He points out the Immigration and Naturalization Service (INS) instructed its employees to advise aliens, if it encountered them, of the time left to apply for permanent residence. He also accuses INS of not advising him of adverse evidence used in the adjudication of his application.

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 April 12, 1989. The 43-month eligibility period for filing for adjustment expired on November 12, 1992. The Application for Adjustment of Status from Temporary to Permanent Resident (Form I-698) was filed on November 18, 2001, nine years late. The director therefore denied the untimely I-698 application, and subsequently terminated the applicant's temporary resident status.

On appeal, the applicant claims that he did not apply for adjustment in a timely fashion because he had not been properly advised of the grant of temporary residence, and of the need to apply for permanent residence. INS did send notices of approval of temporary residence to aliens' last known addresses. INS and private voluntary organizations widely publicized the requirement of applying for adjustment to permanent residence within the requisite period. Furthermore, INS did send "warning" notices to aliens' last known addresses, specifically advising them of the 43-month period.

It is not clear if the applicant is claiming that he was not properly advised by INS employees when he appeared at an INS office. If that is his claim, it simply cannot be confirmed by a review of the record.

The applicant's assertion that INS misused adverse evidence is without merit. No adverse evidence was used in the adjudication of his application, or in the termination of his status.

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 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. It is not apparent that INS improperly advised, or failed to advise, the applicant. 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.