

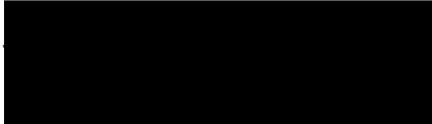
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U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. A3042  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: TEXAS SERVICE CENTER

Date:

JUL 12 2005

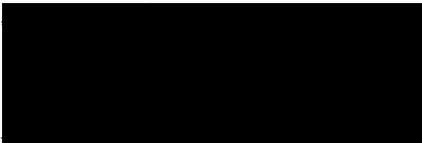
IN RE:

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, Texas 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 claimed that he filed a timely application in September 1990.

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).

When the record was originally reviewed by this office, evidence of the approval of temporary residence was missing. The matter was remanded to the director for entry of the evidence of approval of temporary residence. The director complied, and unnecessarily sent a notice to the applicant indicating the case was reopened. Pursuant to the remand order, all that was required of the director was to enter the evidence into the record and return it to this office.

The record indicates the applicant was granted temporary resident status on September 22, 1988. The 43-month eligibility period for filing for adjustment expired on April 22, 1992. The Application for Adjustment of Status from Temporary to Permanent Resident (Form I-698) that is in the record was received on June 18, 1998. The director therefore denied the untimely Form I-698 application, and subsequently terminated the applicant's temporary resident status.

The applicant asserts he filed an earlier Form I-698, in September 1990. There are no documents in the record relating to such claimed application. There is no evidence, such as a postal receipt, of anything having been mailed to the Service in that time frame. 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.

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