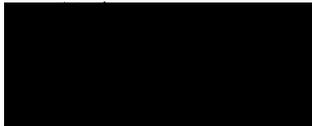


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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: JUN 15 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 that he found out in 1993 that his temporary resident card was mailed by the Immigration and Naturalization Service (INS) to the wrong address. He indicates that INS continued to grant extensions of his employment authorization card until it advised him to apply for adjustment to permanent residence in 1998.

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 February 4, 1993. The 43-month eligibility period for filing for adjustment expired on September 4, 1996. The Application for Adjustment of Status from Temporary to Permanent Resident (Form I-698) was first submitted on April 6, 1998, and was later resubmitted on April 20, 1998. The director therefore denied the untimely I-698 application, and subsequently terminated the applicant's temporary resident status.

On appeal, the applicant implies that he did not apply for adjustment in a timely fashion because he had not been properly advised of the need to do so by INS employees at the local office when he acquired his extensions of employment authorization. The applicant's contention that he was not properly advised when he appeared at INS offices simply cannot be confirmed by a review of the record. INS and private voluntary organizations did widely publicize the requirement of applying for adjustment to permanent residence within the requisite period. Furthermore, INS did send notices to aliens' last known addresses, specifically advising them of the requirement. Finally, if the applicant was told in 1993 that his temporary resident card had been mailed to a wrong address, then at least he was aware that he had been granted temporary residence.

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. Nevertheless, there is no waiver available, even for humanitarian reasons, of the requirements stated above.

The burden to file the adjustment application in a timely manner remains with the applicant. *See* 8 C.F.R. § 245a.3(d). 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.