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**U.S. Citizenship
and Immigration
Services**

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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:

Self-represented

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 he filed a timely application, and never received a response.

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 February 17, 1988. The 43-month eligibility period for filing for adjustment expired on September 17, 1991. The Application for Adjustment of Status from Temporary to Permanent Resident (Form I-698) was received on February 26, 2002, over ten years late. 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 response to a notice of intent to terminate, he provided a photocopy of a partially obscured front of a Form I-698, and a photocopy of a money order made out to INS (Immigration and Naturalization Service) dated July 23, 1990. As stated by the director in the termination notice, the incomplete copy of Form I-698 fails to include important data, such as the name of the applicant, and there simply is no evidence of the filing of that application in 1990 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.

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