



U.S. Citizenship
and Immigration
Services

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FILE:



Office: California Service Center

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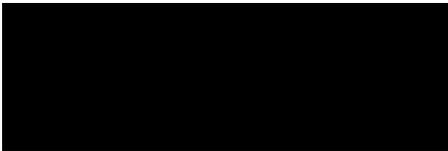
Applicant:



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:



PUBLIC COPY

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 F. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The termination of 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 status because the applicant had failed to apply for permanent residence in time, and because she had been convicted of a felony.

Neither the applicant nor counsel has responded to the most recent notice of termination. Earlier, counsel provided evidence that the court reopened and dismissed (expunged) the felony conviction.

Temporary resident status may be terminated if the alien is convicted of a felony, or three or more misdemeanors. 8 C.F.R. § 245a.2(u)(1)(iii).

"Felony" means a crime committed in the United States punishable by imprisonment for a term of more than one year, regardless of the term such alien actually served, if any, except when the offense is defined by the state as a misdemeanor, and the sentence actually imposed is one year or less, regardless of the term such alien actually served. Under this exception, for purposes of 8 C.F.R. Part 245a, the crime shall be treated as a misdemeanor. 8 C.F.R. § 245a.1(p).

The applicant was convicted on March 16, 1986 in California of Obtaining Aid by Fraud, a felony. In an earlier termination proceeding, counsel provided the expungement order, and the Director, Western Service Center accepted it and reinstated the applicant's temporary resident status. Nevertheless, the Director, California Service Center later terminated the applicant's status in part because of the same felony conviction.

Under the current statutory definition of "conviction" provided at section 101(a)(48)(A) of the Act, no effect is to be given, in immigration proceedings, to a state action which purports to expunge, dismiss, cancel, vacate, discharge, or otherwise remove a guilty plea or other record of guilt or conviction. Any subsequent action which overturns a conviction, other than on the merits of the case, is ineffective to expunge a conviction for immigration purposes. An alien remains convicted for immigration purposes notwithstanding a subsequent state action purporting to erase the original determination of guilt. *Matter of Roldan*, 22 I&N Dec. 512 (BIA 1999).

The Director, California Service Center correctly concluded that the felony conviction bars the applicant from lawful temporary residence.

The director also 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.

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 March 3, 1994. The 43-month eligibility period for filing for adjustment expired on October 3, 1997. The Application for Adjustment of Status from Temporary to Permanent Resident (Form I-698) was first received on April 6, 1998, albeit without the correct fee. It was later filed on May 8, 1998. The director therefore denied the untimely Form I-698 application, and subsequently terminated the applicant's temporary resident status.

The Immigration and Naturalization Service and private voluntary organizations widely publicized the requirement of applying for adjustment to permanent residence within the requisite period. Furthermore, 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 was convicted of a felony. In addition, she failed to apply for permanent residence in a timely manner. The termination of status was correct.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.