

**PUBLIC COPY**



U.S. Citizenship  
and Immigration  
Services

**Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**



LI

FILE:



Office: Vermont Service Center

Date: **NOV 02 2005**

IN RE:

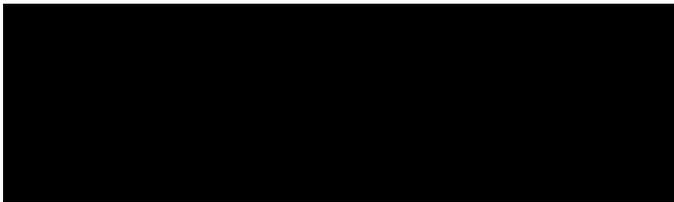
Applicant:



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, Vermont 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 his prior attorney did not give him notice of the requirement, and did not file the application for permanent residence. The applicant also points out that his son was murdered overseas, and that he was psychologically devastated and preoccupied with subsequent arrangements and travel.

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 December 1, 1987. The 43-month eligibility period for filing for adjustment expired on July 1, 1991. The Application for Adjustment of Status from Temporary to Permanent Resident (Form I-698) was first received on August 20, 1998, and was later received with the correct fee on October 6, 1998. The director therefore denied the untimely I-698 application, and subsequently terminated the applicant's temporary resident status.

The applicant points out that his son died in August 1988. The applicant was, no doubt, devastated, and unable to focus on his immigration situation for some time. However, he had until July 1, 1991 to file his adjustment application. Advice was available from the Immigration and Naturalization Service (INS) and voluntary organizations. INS and private voluntary organizations did widely publicize the requirement of applying for adjustment to permanent residence within the requisite period. Furthermore, INS sent notices to aliens' last known addresses, specifically advising them of the requirement. The burden to file the adjustment application in a timely manner remains with the applicant. *See* 8 C.F.R. § 245a.3(d).

Citizenship and Immigration Services is not without sympathy for the applicant. Her statements made on appeal have been considered. Nevertheless, there is no waiver available, even for humanitarian reasons, of the requirements stated above. 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.