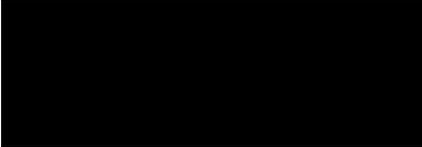


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U.S. Citizenship
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Services

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Office: Nebraska Service Center

Date:

7/25/2005

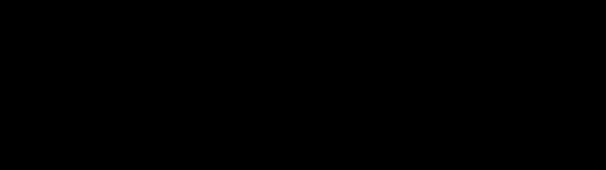
IN RE:

Applicant:



APPLICATION: Application for Temporary Resident Status under 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, Nebraska 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 she filed an adjustment application within the 43-month period. She points out that she is married to a United States citizen, and has lived in the United States for 30 years.

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. See 8 C.F.R. § 245a.2(u)(1)(iv).

The applicant was granted temporary resident status on November 7, 1988. The 43-month eligibility period for filing for adjustment expired on June 7, 1992. The Application for Adjustment of Status from Temporary to Permanent Resident (Form I-698) that is in the record was filed on December 9, 2002. The director therefore denied the untimely Form I-698 application, and terminated the applicant's temporary resident status.

The applicant asserts that she applied for adjustment with her sister in 1991. She states that the Immigration and Naturalization Service (INS) processed and approved her sister's application, but never acknowledged the receipt of her own application, even though it was mailed to INS in the same envelope that contained her sister's application. She provides her own detailed affidavit, and another from her sister, setting forth the chronology of events regarding their completion and submission of the applications. Counsel stresses that, as the affidavits are detailed, credible and internally consistent, they should be accepted as evidence of the claimed 1991 filing under the "preponderance of evidence" standard as described in *Matter of E--M--*, 20 I&N Dec. 77 (Comm. 1989).

Counsel is correct in stating that, in legalization matters involving applications for temporary and permanent residence, evidence is to be considered under the "preponderance of evidence" standard, which allows for the consideration of affidavits. In *Matter of E--M--*, *id.*, the issue was the sufficiency of evidence of residence that was required to be submitted with an application for temporary residence. In *E--M--*, the application had been timely filed and was in the record; whether or not the application was filed timely was not an issue. Nothing in *E--M--* suggests that the fact of the filing of an application itself may be established by the submission of affidavits. Rather, *E--M--* relates to supporting evidence that is submitted *with* an application.

The applicant and her sister explain that they did not make copies of the applications submitted in 1991, and therefore cannot produce a copy of the applicant's application at this time. It is noted that the applicant also has not submitted a copy of the money order that she purportedly submitted with the 1991 application. Her sister's file, [REDACTED] has been reviewed, and there is no application relating to the applicant in that file. There is no contemporaneous evidence of the claimed attempted filing in 1991.

The applicant's statements made on appeal have been considered. Nevertheless, in the absence of some contemporaneous evidence of a 1991 adjustment application, it is concluded that there is insufficient evidence of a timely filing for adjustment.

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