



U.S. Citizenship
and Immigration
Services

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FILE:



Office: Vermont Service Center

Date:

OCT 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:

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.

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 states that he did not know, until it was too late, that he only had 43 months in which to apply for adjustment. He explains that he thought his permanent residence would come automatically. He provides a photocopy of an adjustment application that he says he submitted in 1996, and he also claims to have submitted one in March or April 1994 after having been advised to do so by an immigration officer.

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 June 1, 1990. The 43-month eligibility period for filing for adjustment expired on January 1, 1994. The Application for Adjustment of Status from Temporary to Permanent Resident (Form I-698) that is in the record was submitted on May 26, 1998. The director therefore denied the untimely I-698 application, and subsequently terminated the applicant's temporary resident status.

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. Notices of approval of temporary residence, and notices advising aliens of the deadline by which to apply for permanent residence, were sent to aliens' last known addresses. Furthermore, the Immigration and Naturalization Service (INS) and private organizations publicized the need to apply for permanent residence within the 43-month period.

Although the applicant asserts that he filed an adjustment application in March or April 1994, after finding out about the requirement, and another in 1996, neither of these filings would have fallen within the 43-month period. There are no records within Citizenship and Immigration Services (formerly INS) of these purported filings.

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 within the legalization program. The director shall route the file to the correct office for completion of action on another application, Form I-485, that is pending in this file.