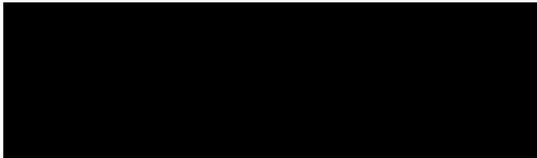




U.S. Citizenship
and Immigration
Services

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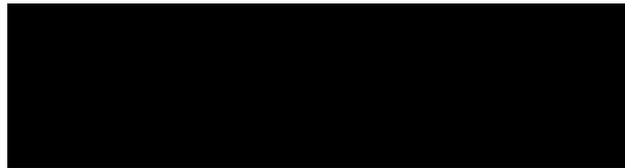


Office: California Service Center

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, 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 claims that she filed an adjustment application within the 43-month period. She indicates that the Immigration and Naturalization Service (INS) may have lost it.

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 December 31, 1987. The 43-month eligibility period for filing for adjustment expired on July 31, 1991. The Application for Adjustment of Status from Temporary to Permanent Resident (Form I-698) that is in the record was submitted on September 30, 1997. The director therefore denied the untimely application and terminated the applicant's temporary resident status.

The applicant states that she sent a Form I-698 adjustment application with the required money order to the Huntington Park, California INS office in August 1989. She seemingly indicates that she did so shortly after having earned a certificate signifying completion of an English language and civics course. She explains that the Form I-698 filed on September 30, 1997 was the second Form I-698 that she submitted.

The applicant refers to an earlier adjustment application submitted in 1989, but has not provided a copy of it. She has not furnished proof of mailing, or a copy of the certificate of "satisfactory pursuit" of an English and civics class commonly submitted with adjustment applications. Nor has she submitted a copy of the money order. There is no evidence in the record, or in the computer records of Citizenship and Immigration Services (formerly INS), of a filing for adjustment prior to the 1997 application. Finally, it is noted that, when the Form I-698 was filed in 1997, it was not accompanied by any statement from the applicant explaining that it was actually the second time that she had applied. Given these facts, it cannot be concluded that an earlier application was filed in 1989.

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. 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.