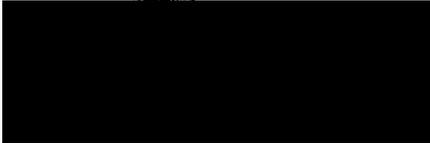




U.S. Citizenship  
and Immigration  
Services

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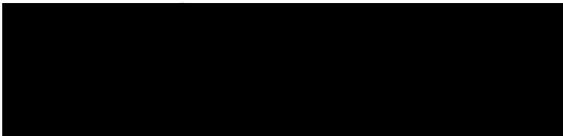
Office: California Service Center

Date: OCT 28 2005

IN RE:           Applicant:     Denis Pantis

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, California Service Center is before the Administrative Appeals Office on appeal. The appeal will be sustained.

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.

In response to the notice of intent to terminate, the applicant pointed out that the notice he had received, advising him to file his application "soon," did not specify a deadline. He explained that he nevertheless attempted to promptly file the application, but was thwarted by the actions of the Immigration and Naturalization Service (INS).

On appeal, prior counsel and counsel have expanded on the applicant's assertions, and provided evidence of the efforts the applicant made to file the application in a timely manner.

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 August 31, 1989. The 43-month eligibility period for filing for adjustment expired on March 31, 1993. The Application for Adjustment of Status from Temporary to Permanent Resident (Form I-698) was filed on May 7, 1993. The director therefore denied the untimely I-698 application, and subsequently terminated the applicant's temporary resident status.

A review of the record reveals the Service issued a notice (hereafter referred to as the reminder notice) on January 31, 1993, which informed the applicant:

You were granted temporary residence and were also sent a notice advising you to apply for permanent residence. You were also sent a package containing the application forms needed to apply. We have not received your application. The recent enactment of the Immigration Act of 1990 provides an additional 12-month period for filing an application.... Your eligibility period has been extended, but it is important that you file your application as soon as possible to allow you to petition for your relatives and/or become a U.S. citizen.

With this notice the Service intended to advise the applicant that the original eligibility period of 31 months had been extended to 43 months to better enable applicants to file timely applications. However, a reasonable interpretation of the notice might be that the recipient had an additional 12 months in which to file the application. The notice never revealed that the applicant's 43-month eligibility period would expire in two months.

The applicant explains that he received the notice in February, and provides a copy of a letter he wrote to the director on March 3, requesting that the director send him an application because he had never received one in the mail as he was supposed to have. He submits a copy of the March 12 response, in which he was advised to contact the INS office in San Francisco. The applicant states that he thought the director might not have realized that he lived in Sacramento, and so he went into the INS office in Sacramento to directly acquire the forms. He explains that on his first trip to the Sacramento office, he was incorrectly given Form I-751 to file. He further states that he went into that office again, and was incorrectly given Form I-752 to file. He furnishes a copy of the letter he then wrote to the San Francisco office on April 8, asking for the correct forms. However, at that point, the deadline had passed.

Given the precise chronology of events recounted by the applicant, and the evidence submitted, it is concluded that the applicant's claim as to what transpired during that period is credible.

Counsel points out that the applicant, even though he had not moved:

1. Never received word in the first place that he was granted temporary residence;
2. Never received the card signifying temporary residence, and the packet with which to apply for permanent residence (until after the deadline);
3. Never knew of the deadline, until it was too late;
4. Construed the reminder notice as alerting him to a twelve-month period within which to apply.

The director asserts that, because the applicant did not move during the 43-month period, the approval notice, temporary residence card and the packet for applying for permanent residence would have been mailed to the correct address, implying that the applicant really did receive these items. Counsel addresses this by pointing out that the record contains no evidence that these items were ever mailed to the applicant.

Also, counsel explains that, because the applicant was self-employed during the 43-month period, he had no employer, and therefore no need to renew his employment authorization card. Thus, he had no contact with INS during that period, until he received the reminder notice.

Counsel further refers to the director's instructions as to the filing of this appeal, and points out that the instructions regarding the form of payment and fee were wrong. While this is not relevant to the issue in question, which is the filing of the permanent residence application, counsel mentions this in an effort to show that incorrect information was still being dispensed to the applicant as late as May 2004. Counsel's overall thrust is that the series of INS errors should result in a finding of misconduct.

There is certainly no evidence in this matter of intentional misconduct on the part of INS. However, the reminder notice provided incomplete if not misleading information detrimental to the applicant's opportunity to apply within the 43-month period. In spite of that, the applicant promptly proceeded to attempt to apply, but the failure of the Sacramento office to provide the applicant with the correct form delayed the filing of the application. In this case, the premise that the applicant can be held responsible for failing to file for adjustment within 43 months cannot be supported. It is noted that the particular

circumstances of this case dictate such a decision. It is not concluded that every applicant claiming lack of notice or confusion concerning the grant of temporary residence is relieved of his or her responsibility to file a timely application.

**ORDER:** The appeal of the termination of temporary residence is sustained, and the termination is withdrawn. The Director, California Service Center shall adjudicate the adjustment application.