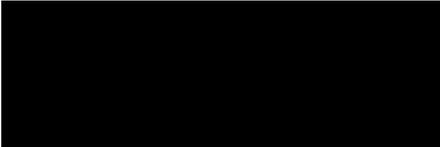




U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: Texas Service Center

Date: SEP 27 2005

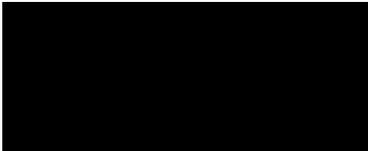
IN RE:

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, Southern 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 indicated that he was just a youth during the 43-month period, and explained that his parents simply did not take care of the paperwork. The Director, Texas Service Center then reopened the matter, and directed the applicant to submit additional documentation. However, that director later rescinded the reopening and reinstated the termination, finding that the applicant clearly did not file his adjustment application within the 43-month period.

In response, counsel states, inter alia, that the 43-month period should reasonably be considered to have begun when the applicant became an adult at twenty-one years of age.

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 23, 1987. The 43-month eligibility period for filing for adjustment expired on July 23, 1991. The Application for Adjustment of Status from Temporary to Permanent Resident (Form I-698) was filed on January 28, 1999. The director therefore denied the untimely I-698 application, and subsequently terminated the applicant's temporary resident status.

Counsel opines that the 43-month period should begin when an alien becomes an adult. The law is clear, and provides no exceptions for the requirement that an adjustment application must be filed within 43 months of the actual approval of temporary residence. Additionally, adoption of a different standard for children could result in a situation where their applications might be approved while their parents' applications could be denied, leaving the children with no lawful resident parents to care for them. The 43-month period from the date of approval of temporary residence will be adhered to.

Counsel cites 8 C.F.R. § 245a.3(a)(3), which states, regarding adjustment applications: "The Service Center Director shall sua sponte reopen and reconsider without fee any application which was previously denied for late filing." That regulation applies to applications that were initially denied because they had not been filed within *31 months* of the approval of temporary residence. The original eligibility period of 31 months was extended to 43 months to better enable applicants to learn English and civics, and file timely applications. There is no requirement that applications properly denied because they were filed after the expiration of the 43-month period must be reopened.

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