



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date: **AUG 01 2006**

XBI-88-050-0070

IN RE:

Applicant:

[REDACTED]

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:

[REDACTED]

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.

Mari Johnson

2 Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The applicant's temporary resident status was terminated by the Director, Vermont Service Center. The applicant appealed, and the Administrative Appeals Office (AAO) then remanded the matter. The director again terminated the applicant's status, and the matter is now before the AAO 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 stated that she did file a timely application, but never received word on it. She stated that she filed a second application in 1995, right after she was told to do so by employees of the Immigration and Naturalization Service (INS).

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 director first indicated that the applicant was granted temporary resident status on March 7, 1988. However, the AAO remanded the matter to the director for a clarification of the date of approval, and the director entered evidence into the record that shows the approval date was May 24, 1988. The 43-month eligibility period for filing for adjustment expired on December 24, 1991. The Application for Adjustment of Status from Temporary to Permanent Resident (Form I-698) that is in the record was submitted on June 19, 1995. The director denied the untimely Form I-698 application, and subsequently terminated the applicant's temporary resident status.

Notices of approval of temporary residence, and notices advising aliens of the need to apply for permanent residence, were sent by INS to aliens' last known addresses. In this case, the record does contain INS notices dated September 17, 1990 and March 10, 1991 that were sent to the applicant's last known address, encouraging her to apply for permanent residence. However, the notices were returned to sender as undeliverable.

The applicant sent a letter to INS on June 21, 1991, asking about her case. The Director [REDACTED] [REDACTED] replied in a letter dated July 12, 1991, in which he stated that there was no record of a permanent residence application from her and that she should consider filing a duplicate application. However, the director's letter was returned to sender, stamped "no such number." The director had sent it to [REDACTED], which is the address the applicant had shown in her inquiry. Later correspondence from the applicant shows her address to be [REDACTED].

As stated above, while the application for permanent residence in the record was filed in 1995, the applicant claims to have submitted an earlier one. She provides a photocopy of an undated application for permanent residence, and photocopies of money orders adding up to the fee amount of \$80.00 for that application. One of the money orders was dated July 20, 1990. She also provides a photocopy of Form I-699 Certificate of Satisfactory Pursuit, dated July 18, 1990, showing that she had enrolled in an English language and civics course, in order to qualify for permanent residence. Although these copies may serve to indicate that the applicant attempted in 1990 to file an application for permanent residence in a timely manner, the filing was not accomplished.

It is noted that the INS and private organizations widely publicized the need to apply for permanent residence within the 43-month period. Also, 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).

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.