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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
XHP-88-500-1026

Office: California Service Center

Date: DEC 18 2006

IN RE: Applicant: [REDACTED]

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: 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, Chief
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 points out that he was a crime victim, and because of that was in a hospital from October 1988 to March 1989. He provides a statement from the hospital indicating that it is unable to provide proof from so many years ago. The applicant also focuses on a publication of the Immigration and Naturalization Service (INS) that was meant to serve as a guide to applicants applying for permanent residence. He asserts this guide was only printed in English, and that prejudiced his opportunity to apply for permanent residence in a timely manner. He also claims the guide was confusing, and that the immigration employees did not warn him about the deadline for applying.

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 months of the date he/she was granted status as a temporary resident under § 245a.1 of this part. 8 C.F.R. § 245a.2(u)(1)(iv).

The applicant was granted temporary resident status on September 7, 1988. The 43-month eligibility period for filing for adjustment expired on April 7, 1992. The Application for Adjustment of Status from Temporary to Permanent Resident (Form I-698) was received by INS on March 24, 2003, almost 11 years late. The director therefore denied the untimely I-698 application, and subsequently terminated the applicant's temporary resident status.

The applicant indicates he was hospitalized for the first five months of the 43-month period, and because of that was unable to apply for permanent residence. Nevertheless, the application process simply involved, initially, mailing the application, and he could have obtained assistance with that if necessary. The hospitalization did not prevent him, for the entire 43-month period, from applying.

If the guide the applicant refers to was only printed in English, as the applicant asserts, he could have also received assistance in reading and understanding it. Further, he apparently did make use of the guide, as he acknowledges it did state that applicants had a finite time in which to apply for permanent residence. It is noted that applicants for permanent residence had to demonstrate a working knowledge of the English language. Therefore, it is not clear that guides printed in other languages would be necessary.

While the applicant indicates he lost track of his Alien Registration Number for a while, which was needed in order to apply for permanent residence, INS would have been able to locate it and provide it to him. Advice was available from the INS and voluntary organizations. While the applicant claims written and verbal instructions were not always helpful or complete, he has furnished on appeal an application for permanent residence that he completed in 1989, indicating he was aware of the requirement for filing it well before the end of the 43-month period. 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. However, 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.

It is noted that the applicant was arrested for *Battery on Person*, section 242 of the California Penal Code, on July 10, 1989 in Los Angeles, and that he was later convicted. He was also arrested for *Driving Under the Influence Alcohol/Drugs* in Los Angeles on November 18, 2005, although the disposition of this charge is unknown. The possibility exists that the applicant is ineligible for temporary residence on the basis of criminality.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.