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U.S. Citizenship
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Services

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FILE: [REDACTED] 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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

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 reiterates her explanation that a house fire that occurred within the 43-month period destroyed her home, documents and money, and left her too distraught to think about the immigration process. The applicant also points out that later, shortly after the 43-month period, her infant son died, and she was psychologically devastated.

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 April 2, 1988. The 43-month eligibility period for filing for adjustment expired on November 2, 1991. The Application for Adjustment of Status from Temporary to Permanent Resident (Form I-698) was first received on August 18, 2001. The director therefore denied the untimely I-698 application, and subsequently terminated the applicant's temporary resident status.

The applicant has documented the circumstances surrounding the death of her son, but has been unable to provide documentation concerning the fire. Nevertheless, there is no reason to question her honesty, or her explanation that, after losing everything in the fire, she was unable to focus on the immigration process. It must be noted that, as the director pointed out, the applicant had two years after the fire in which to file the application. Advice was available from the Immigration and Naturalization Service (INS) and voluntary organizations. INS and private voluntary organizations did widely publicize the requirement of applying for adjustment to permanent residence within the requisite period. The burden to file the adjustment application in a timely manner remains with the applicant. See 8 C.F.R. § 245a.3(d).

Citizenship and Immigration Services is not without sympathy for the applicant. Her statements made on appeal have been considered. Unfortunately, no humanitarian waiver exists concerning the requirement to file a timely application. As the applicant has not overcome the grounds for termination of status, the appeal must be dismissed. This action is without prejudice to other benefits the applicant may be eligible for in the future, including relative petitions filed by her children upon their reaching the age of 21.

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