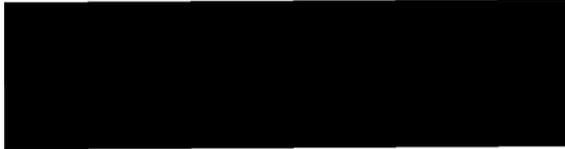




U.S. Citizenship  
and Immigration  
Services

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prevent clearly warranted  
invasion of personal privacy**



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FILE:



Office: Vermont Service Center

Date: DEC 18

XMA-88-806-4095

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: 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, Vermont Service Center, is before the Administrative Appeals Office (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 reiterates that his presence was necessary in Colombia throughout that period due to his mother's long-term illness, and the needs of his family members.

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 or 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 January 20, 1989. The 43-month eligibility period for filing for adjustment expired on August 20, 1992. The Application for Adjustment of Status from Temporary to Permanent Resident (Form I-698) was filed on July 8, 1998, almost six years late. The director therefore denied the untimely I-698 application, and subsequently terminated the applicant's temporary resident status.

The applicant explains that he was absent from the United States from January 12, 1989 to October 12, 1997 in order to be with his ailing mother. He states that he was the head of the household, and when he heard of his mother's critical condition, he left the United States the next day, leaving behind his job, opportunities and the continuance of his residence. His explanation is credible, and supported by documentation.

Because the process of applying for adjustment to permanent residence involved mailing the application to the Immigration and Naturalization Service (INS), now Citizenship and Immigration Services (CIS), the applicant could have accomplished that from outside of the United States. Advice was available from INS and voluntary organizations. 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 requirement to file a timely application. The applicant has not overcome the basis for termination of status.

The application for adjustment to permanent residence was deniable for an additional reason: the applicant did not maintain continuous residence as a temporary resident. A single absence from the United States of more than 30 days, and aggregate absences of more than 90 days during the period for which continuous residence is required for adjustment to permanent residence, shall break the continuity of such residence, unless the temporary resident can establish that he did not, in fact, abandon his residence in the United States during such period. 8 C.F.R. § 245a.3(b)(2). Here, the applicant, in his own words, left behind the continuance of his residence when he departed the United States. He remained out of the United States for almost nine years, and eventually reentered with a visitor visa. While it is understandable why he went to Colombia, and resumed his residence there, it cannot be held

adjustment to permanent residence, his abandonment of residence in the United States would prevent his acquisition of permanent residence.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9<sup>th</sup> Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a de novo basis).

The applicant's statements made on appeal have been considered. However, he has failed to overcome the basis of termination of status.

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