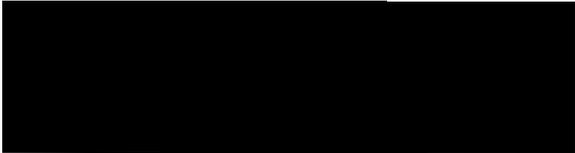




U.S. Citizenship
and Immigration
Services

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invasion of personal privacy



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FILE: [Redacted]
XBA-88-152-5072

Office: Vermont Service Center

Date: DEC 27 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, Vermont Service Center is before the Administrative Appeals Office on appeal. The appeal will be sustained.

The director terminated the applicant's temporary resident status because the applicant apparently failed to properly file the application for adjustment of status from temporary to permanent residence within the 43-month application period.

In response to the Notice of Intent to Terminate, and on appeal, the applicant states that she did apply for adjustment in a timely fashion, and provides evidence of such.

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).

According to a computer printout in the record, and a clear notation in the action block of the application for temporary residence, the applicant was granted temporary resident status on March 10, 1989. The applicant has maintained throughout these proceedings that she was granted on July 7, 1988 because that is the date that appears on her temporary resident card. However, as the director pointed out, that date is retroactive to the time she filed for and was interviewed for temporary residence. To be fair to applicants, the 43-month period to file for adjustment to permanent residence begins at the time of *actual* approval of temporary residence, in order to give applicants the full 43 months in which to apply. The 43-month eligibility period for filing for adjustment in this case expired on October 10, 1992. The Application for Adjustment of Status from Temporary to Permanent Resident (Form I-698) that the director denied was received by the service center on October 12, 1996. The director then denied the untimely Form I-698 application, and simultaneously issued a Notice of Intent to Terminate. He later terminated the applicant's temporary resident status.

On April 8, 1999 the applicant responded to the intent to terminate notice by furnishing a photocopy of a Form I-698 that had been completed and signed by her on December 20, 1990. It bore two date stamps seemingly used by an Immigration and Naturalization Service (INS) office; June 1, 1991 and October 13, 1991. She also submitted a photocopy of an \$80.00 money order made out to "U.S. Department of Justice, INS," dated May 4, 1991. On February 25, 1992 the Western Service Center mailed this original Form I-698 back to the applicant with a notice that stated two things:

1. An additional \$40.00 fee is required to process your application. Please submit a fee in the amount of \$120.00.
2. Your application was not submitted during the eligibility period. Therefore, it is returned to you as untimely filed.

The applicant has indicated that she did not receive the notice for a long time. When she finally received it, because of the passage of time, and based on the wording in #2, which was underlined, she believed she could no longer file a timely application. Nevertheless, she did file the later 1996 Form I-698.

The February 25, 1992 notice from the Western Service Center was incomplete, confusing, and partly erroneous. Those aliens who did not apply for permanent residence within 31 months of having been granted temporary residence, which was the original eligibility period, were allowed to apply within the next 12 months, provided they paid a filing fee of \$120.00 instead of the original \$80.00. However, in this case, all indications are the applicant submitted the original Form I-698 within 31 months. The copy of it that she has submitted, and the correct money order for \$80.00, were both dated long before the 31-month period expired. Because the applicant acquired the money order on May 4, 1991, and the photocopied Form I-698 bears a date-stamp of June 1, 1991, there is no reason to believe INS did not receive it then. That was well within the 31-month period; thus, the \$80.00 money order related to the proper required fee at that point. The application should not have been returned to the applicant with a request for an additional \$40.00.

Based on the evidence available in the record, it is concluded that the applicant submitted the proper Form I-698 adjustment application with the proper fee in June 1991. It is further concluded that she should not be penalized by an INS error. Therefore, the applicant is deemed to have overcome the finding that she had not timely applied for permanent residence.

ORDER: The appeal is sustained, and the termination of status is withdrawn. The director shall reopen and adjudicate the Form I-698 adjustment application.