



U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED]  
XPT-88-521-6027

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.

A handwritten signature in black ink, appearing to be "Robert P. Wiemann".

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.

On appeal, the applicant states that he did apply for adjustment in a timely fashion, and provides evidence.

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 applicant was granted temporary resident status on January 25, 1989. The 43-month eligibility period for filing for adjustment in this case expired on August 25, 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 April 30, 1997. 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 appeal the applicant insists he submitted a Form I-698 application within 12 months from the date he was granted temporary residence. He states he appeared for the interview regarding that application on February 25, 1991, and provides a copy of the notice he had received from the Immigration and Naturalization Service (INS) directing him to report for the interview. That notice acknowledged receipt of his application that was filed with the proper fee on February 2, 1990. The applicant further states he was told at the interview to wait for further word concerning his application. He explains that he finally decided he was waiting in vain, and then filed another application in 1997.

The record contains the initial Form I-698 submitted on February 2, 1990. It is not clear why action was not taken on such application. The application was date-stamped February 2, 1990, and a receipt number was entered onto the application, but the receipt was not entered into the computerized tracking system.

A note entered into the record by the service center, subsequent to the appeal, states the interview the applicant claims he had with INS was really with the police, concerning the theft of his temporary resident card. The record does contain a copy of the police report filed by the applicant. However, he provided that with his application to INS for a replacement temporary resident card. There is no reason to believe the applicant was confused as to whether he was interviewed by the police or INS.

The applicant submitted the Form I-698 adjustment application with the proper fee in February 1990. Therefore, he has overcome the finding that he 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.