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U.S. Department of Homeland Security
20 Mass. Ave. N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:



Office: California Service Center

Date: JAN 12 2006

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.

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

Robert P. Wiemann, Director
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 explains that she filed a timely application, and never received a response.

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. 8 C.F.R. § 245a.2(u)(1)(iv).

The applicant was granted temporary resident status on October 12, 1988. The 43-month eligibility period for filing for adjustment expired on May 12, 1992. The Application for Adjustment of Status from Temporary to Permanent Resident (Form I-698) that is in the record was received on March 2, 1998. The director therefore denied the untimely Form I-698 application, and subsequently terminated the applicant's temporary resident status.

In response to a notice of intent to terminate, the applicant stated she had submitted a Form I-698 in June or July of 1990, but failed to receive a response. She also stated that she went to a local office of the Immigration and Naturalization Service (INS) in November 1990 to inquire about her application, and was told that she needed to file Form I-698. According to the applicant, she informed that INS office employee that she had already filed Form I-698, and the employee then told to wait for a response.

The applicant has not furnished a photocopy of the alleged 1990 application, or its fee receipt, or a postal receipt as proof of mailing. She has submitted a copy of a test result notification from Educational Testing Service, dated May 2, 1990, reflecting that she passed the English language and civics test necessary for applying for permanent residence. Given that, it would have been logical for her to have attempted to apply for permanent residence in June or July 1990 as she claims. Also, she has furnished a copy of a letter she wrote to INS in 1993 requesting information about her 1990 application. However, there is simply no evidence that a Form I-698 application was received by INS in 1990, or anytime until 1998.

It is noted that in 1996 the Seattle INS office issued a Form I-94 document to the applicant signifying that she had been granted permanent resident status. This document was issued in error, as there is no evidence in the record, or in computer records, that an application for permanent residence was approved. Because this error occurred four years *after* the deadline for applying for permanent residence, it constitutes harmless error.

The applicant's statements made on appeal have been considered. Nevertheless, there is not sufficient evidence available to conclude that she filed a timely application for adjustment to permanent residence. There is no waiver available, even for humanitarian reasons, of the requirement to have filed a timely application. As the applicant has not overcome the basis for termination of status, the appeal must be dismissed.

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