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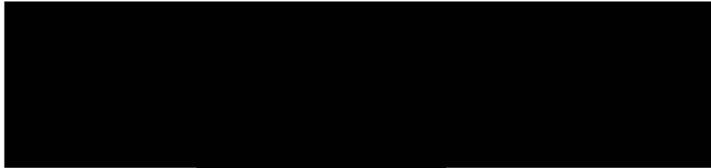
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:



XHO 88 530 1005

Office: CALIFORNIA SERVICE CENTER

Date: SEP 06 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. The file has 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. P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The termination of temporary resident status by the Director, California Service Center, is now 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 Form I-698, Application for Adjustment of Status from Temporary to Permanent Resident, within the 43-month application period.

On appeal, the applicant claims that he previously submitted a timely Form I-698 adjustment application to the Immigration and Naturalization Service or the Service (now Citizenship and Immigration Services or CIS) before the 43-month application period expired in August of 1992.

The status of an alien lawfully admitted for temporary residence under section 245A(a)(1) of the Immigration and Nationality Act (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 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 January 9, 1989. The 43-month eligibility period for filing for adjustment expired on August 9, 1992. The record shows that the applicant attempted to file the Form I-698 adjustment application with the Service on December 10, 1992, but without the full requisite fee of \$120.00. The record shows that the Service returned the Form I-698 adjustment application to the applicant with explicit instructions regarding the proper and full amount needed to file the Form I-698 adjustment application. A review of the record reveals that the applicant did not file the Form I-698 adjustment application with the full \$120.00 fee until October 15, 1998. The director therefore denied the untimely Form I-698 application on January 22, 1999, and subsequently terminated the applicant's temporary resident status. It must be noted that even if the applicant had submitted the Form I-698 adjustment application with correct fee of \$120.00 to the Service on December 10, 1992, such filing would have been considered untimely as the 43-month application period expired on August 9, 1992.

The applicant claims that he previously filed a timely Form I-698 adjustment application before the 43-month application period expired in August of 1992 on appeal. However, the applicant has not furnished any evidence such as a filing receipt or a money order receipt to corroborate his claim that he filed the Form I-698 adjustment application prior to the expiration of the 43-month application period on August 9, 1992. Therefore, the applicant's claim that he filed the Form I-698 adjustment application in a timely manner cannot be considered as persuasive without independent evidence to corroborate such claim. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998)(citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The Service and private voluntary organizations widely publicized the procedures of the amnesty program, including the necessity of applying for permanent residence. If the applicant required assistance in pursuing his application, such assistance was widely available with inquiries to the

Service, from private nonprofit Qualified Designated Entities, and from private legal assistance resources. Furthermore, the original eligibility period of 31 months was extended to 43 months to better enable applicants to file timely applications. The burden to duly file the Form I-698 adjustment application in a timely manner remains with the applicant. 8 C.F.R. § 245a.3(d).

The statements on appeal have been considered. Nevertheless, there is no waiver available, even for humanitarian reasons, of the requirements stated above. As the applicant has not overcome the grounds for termination of status, the appeal must be dismissed.

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