

Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

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



U.S. Citizenship  
and Immigration  
Services

41

PUBLIC COPY

[REDACTED]

FILE:

[REDACTED]

Office: CALIFORNIA SERVICE CENTER

Date: SEP 29 2006

XEM 88 517 7039

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:

[REDACTED]

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.

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, counsel asserts that the applicant did not file a timely Form I-698 adjustment application with the Immigration and Naturalization Service or the Service (now Citizenship and Immigration Services or CIS) because he was suffering from severe emotional distress. Counsel submits documentation in support of the appeal.

The status of an alien lawfully admitted for temporary residence under section 245A(a)(1) of the Immigration and Nationality Act (Act), 8 U.S.C. § 1255a(a)(1), 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 was granted status as a temporary resident. 8 C.F.R. § 245a.2(u)(1)(iv).

The applicant was granted temporary resident status on May 19, 1989. The 43-month eligibility period for filing for adjustment expired on December 19, 1992. The applicant filed the Form I-698 adjustment application with the Service on June 11, 2002. The director therefore denied the untimely Form I-698 adjustment application on August 6, 2004, and subsequently terminated the applicant's temporary resident status.

Counsel asserts that the applicant did not file a timely Form I-698 adjustment application with the Service because he was suffering from severe emotional distress on appeal. While counsel submits copies of labels for three different prescription medications indicating that the applicant is currently being treated for anxiety and depression, the record contains no documentation, such as medical records or an affidavit or letter from his doctor, to demonstrate that the applicant was incapacitated as a result of a medical or psychiatric condition. Therefore, the claim that the applicant failed to file the Form I-698 adjustment application in a timely manner as a result of severe emotional distress 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.