



U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE:

[Redacted]

Office: HOUSTON

Date: APR 25 2007

XHU 88 178 2078

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. 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 District Director, Houston, Texas, is 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 an application for adjustment of status from temporary to permanent residence within the 43-month application period.

On appeal, counsel for the applicant states that the applicant is attempting to obtain a copy of the record of proceedings in order to establish that he complied with the requirement to file an adjustment application within the 43-month application period.

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 months of the date he/she was granted status as a temporary resident under § 245a.1 of this part. 8 C.F.R. § 245a.2(u)(1)(iv).

The applicant was granted temporary resident status on January 18, 1989. The 43-month eligibility period for filing for adjustment expired on August 18, 1992. On July 30, 1991, the Immigration and Naturalization Service (the Service), now Citizenship and Immigration Services (CIS), sent the applicant a notice informing him that he needed to file his Form I-698, Application for Adjustment of Status from Temporary to Permanent Resident, prior to the expiration of the 43-month application period. However, the applicant never filed a Form I-698.

On August 19, 2004, the director issued a notice informing the applicant of his intent to terminate his temporary resident status unless the applicant could provide evidence that he did, in fact, file a Form I-698 during the 43-month application period. The record does not contain a response from counsel or from the applicant. The director, therefore, terminated the applicant's temporary resident status on February 8, 2005.

On appeal, counsel for the applicant states that the applicant has filed a FOIA request "in an attempt to present proof to the government of his compliance with I-698."

There is no question as to whether the applicant received the notice informing the applicant that he needed to file a Form I-698 during the 43-month application period. The applicant provided a copy of the notice to the Immigration Judge in Houston, Texas, when he was in removal proceedings in 2003. However, there is no Form I-698 contained in the record of proceeding, and there is no indication in CIS computer records that the applicant ever filed a Form I-698. Counsel has not submitted a photocopy of a Form I-698 purportedly completed and signed by the applicant during the 43-month application period, a photocopy of a notice from the Service acknowledging receipt of a Form I-698 from the applicant during the application period, a photocopy of a money order in payment of the application fee, a photocopy of a receipt from the United States Postal Service indicating that a package was mailed to the Service during the

application period, or any other evidence to establish that the applicant filed a Form I-698 during the 43-month application period. Therefore, counsel's assertion that the applicant filed a timely Form I-698 during the 43-month application period cannot be accepted. There is no waiver, even for humanitarian reasons, for the requirement to file the adjustment application within the 43-month application period.

As the applicant has not overcome the basis for termination of status, the appeal must be dismissed.

The applicant is ineligible for temporary residence for the above stated reasons, with each considered as an independent and alternative basis for denial.

It is noted that the applicant was issued a Form I-862, Notice to Appear, on February 6, 2003, ordering him to appear before an Immigration Judge in removal proceedings at a date and time to be determined. On February 6, 2003, the Immigration Judge in Houston, Texas, terminated the removal proceeding when it was determined that the applicant's temporary resident status had not yet been terminated.

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