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U.S. Citizenship
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AUG 13 2007



FILE: [REDACTED]
XMA 87 052 6047

Office: VERMONT SERVICE CENTER

Date:

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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that 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 Director, Vermont 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, counsel asserts that the applicant had extenuating circumstances that prevented him from filing a timely application to adjust his status to that of permanent resident.

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 November 18, 1987. The 43-month eligibility period for filing for adjustment expired on June 18, 1991. The Application for Adjustment of Status from Temporary to Permanent Resident (Form I-698) was first received March 13, 1998. The director therefore denied the untimely I-698 application, and subsequently terminated the applicant's temporary resident status.

On appeal, counsel explains that the applicant encountered family-related hardships, which ultimately precluded his timely filing of a Form I-698 application to adjust his status to that of a permanent resident. He discusses the applicant's father's hospitalization in 1989 and 1990 as well as the applicant's son's and daughter's health problems in 1992 and 1995, respectively.

First, the AAO notes that the health issues of the applicant's children did not arise until after the applicant's period for filing a timely adjustment application had expired. Second, regardless of the applicant's family-related health issues, Citizenship and Immigration Services (CIS) allowed each applicant a 43-month time frame in which to file a timely adjustment application. In the present matter, the applicant had approximately two years prior to any family health crises to file that application. While the applicant's problems are regrettable, there is no waiver available, even for humanitarian reasons, of the requirement to file a timely application.

CIS and private voluntary organizations did widely publicize the requirement of applying for adjustment to permanent residence within the requisite period. Furthermore, CIS did send notices to aliens' last known addresses, specifically advising them of the requirement.

It is further noted that the original eligibility period of 31 months was extended to 43 months to better enable applicants to file timely applications. The burden to file the adjustment application in a timely manner remains with the applicant. *See* 8 C.F.R. § 245a.3(d).

The burden to file the adjustment application in a timely manner remains with the applicant. *See* 8 C.F.R. § 245a.3(d). The applicant's statements made on appeal have been considered. 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.