



U.S. Citizenship
and Immigration
Services

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FILE:

XHU 88 155 4233

Office: NEBRASKA SERVICE CENTER

Date:

FEB 05 2007

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The termination of temporary resident status by the Director, Nebraska 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 apply for adjustment to permanent resident status within the required period.

On appeal, the petitioner submits a statement.

Section 245A(b)(2) of the Act states, in pertinent part:

Termination of temporary residence. – The [Secretary of Homeland Security] shall provide for termination of temporary resident status granted an alien under subsection (a) –

* * *

(C) at the end of the 43rd month beginning after the date the alien is granted such status, unless the alien has filed an application for adjustment of such status pursuant to paragraph (1) and such application has not been denied.

The corresponding regulation at 8 C.F.R. § 245a.2(u)(1)(iv) further prescribes that 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 “[t]he alien fails to file for adjustment of status from temporary resident to permanent resident on Form I-698 within forty-three (43) months of the date he/she was granted status as a temporary resident[.]”

The record in this case shows that the applicant was granted temporary resident status under section 245A(a)(1) of the Act on December 8, 1988. The petitioner did not file a Form I-698, Application to Adjust Status From Temporary to Permanent Resident, until June 18, 2001, which was nearly nine years after the expiration of the 43-month filing period.

On appeal, the applicant states that he tried to submit his paperwork at a legacy Immigration and Naturalization Service (INS) office, but was told that he had to submit them at the INS office in the state where he previously resided. The applicant reports that he then gave all of his documents to a notary who told him that she would submit them. The applicant explains that he did not know he was not a permanent resident until he applied for a replacement of his alien registration card.

The applicant bears the burden to timely file the application for adjustment from temporary to permanent resident status within the prescribed 43-month period. *See* 8 C.F.R. § 245a.3(b)(1). The statute and regulations do not allow a waiver of untimely filing. Regardless of the applicant's unfortunate circumstances, he bore the burden to timely file his application.

The applicant did not file his Form I-698 within the requisite 43-month period. Accordingly, the applicant's status was properly terminated pursuant to section 245A(b)(2) of the Act and the corresponding regulation at 8 C.F.R. § 245a.2(u)(1)(iv). In his decision, the director properly set

forth a valid basis for termination of the applicant's status. The applicant's statements on appeal fail to overcome the basis for the termination. Accordingly, the appeal will be dismissed.

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