

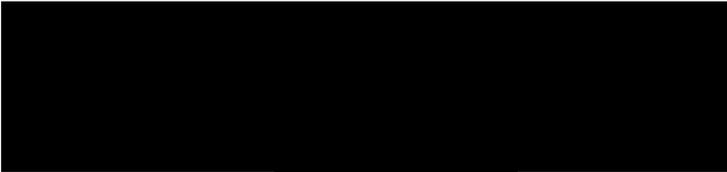


U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
XAU 88 126 2089

Office: TEXAS SERVICE CENTER

Date: FEB 07 2007

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: 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 Director, Texas Service Center terminated the applicant's temporary resident status. The applicant's appeal of the director's decision came before the Administrative Appeals Office (AAO) where the matter was remanded back to the service center. The director reopened the matter and addressed the AAO's concerns, subsequently affirming the termination of the applicant's status. The matter is again on appeal before the AAO. 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 from the director's most recent decision, the applicant states that he never received the service's correspondence regarding his status. More specifically, the applicant stated that the person in charge of opening his mail during his absences did not pass on the necessary correspondence causing him to miss the filing deadline for his application to adjust his status to that of a 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 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 June 29, 1988. The 43-month eligibility period for filing for adjustment expired on January 29, 1992. The Application for Adjustment of Status from Temporary to Permanent Resident (Form I-698) was first received by INS on July 27, 1998. The director therefore denied the untimely I-698 application, and subsequently terminated the applicant's temporary resident status.

On appeal, the applicant explains that his ex-wife was responsible for opening his mail during his employment at sea and suggests that her negligence in mishandling his mail caused him to untimely file the adjustment application.

The burden to file the adjustment application in a timely manner remains with the applicant. *See* 8 C.F.R. § 245a.3(d). Although the applicant's statements made on appeal have been considered, there is no indication that the applicant was improperly advised by Citizenship and Immigration Services. As the applicant has not overcome the basis for termination of status, the appeal must be dismissed.

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