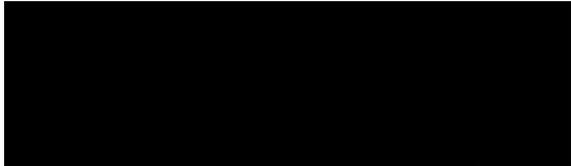


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FEB 09 2007

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date:

WAC 04 246 50504

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.

A handwritten signature in black ink, appearing to read "R. P. Wiemann".

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 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 applicant 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 applicant bears the burden to timely file the application for adjustment from temporary to permanent resident status. *See* 8 C.F.R. § 245a.3(b)(1).

The record in this case shows that the applicant was lawfully admitted for temporary residence under section 245A(a)(1) of the Act on June 5, 1989. The applicant did not file a Form I-698, application to adjust status from temporary to permanent resident, until July 15, 2004, which was over 11 years after the 43-month filing period permitted by the Act and the regulations had expired. Citizenship and Immigration Services (CIS) records contain no indication that the applicant properly filed a Form I-698 during the prescribed 43-month period after he was granted lawful temporary resident status.¹

¹ The record contains a copy of the first page of a Form I-698 with the applicant's name, alien registration number and biographic information. The page is imprinted with a receipt stamp from the Western Service Center dated December 10, 1992. However, the record also contains a letter from the Western Service Center addressed to the applicant and dated December 22, 1992. The letter states that the application was returned because the requisite, additional fee was not included and because line eight of the form was left blank. The letter is imprinted with a receipt stamp from the Western Service Center dated February 12, 1993. CIS records do not show that the applicant filed a Form I-698 on that date. Yet even if the applicant had properly filed the Form I-698 on February 12, 1993, it would have been untimely as the applicant's 43-month filing period ended on January 4, 1993.

On appeal, the applicant states that he responded to the Notice of Intent to Terminate, but claims that he never received any documents regarding the termination of his status. The applicant states that he has lived at [REDACTED] in Hawthorne, California for the past nine years. The director mailed the Notice of Termination to the applicant at that address by certified mail and the record contains a U.S. postal service return receipt card signed by the applicant on January 7, 2005. Accordingly, the record shows that the applicant received the Notice of Termination despite his claim to the contrary on appeal.

We further note that the applicant has a criminal history. The record contains a certified copy of an electronic docket of the Inglewood Municipal Court of the Superior Court, Los Angeles County, California, which shows that on September 7, 1994, the applicant was charged with misdemeanor assault (count 1) and misdemeanor battery (count 2) in violation of sections 240 and 242, respectively, of the California Penal Code (Case Number [REDACTED]). On September 5, 1995, the court dismissed the battery charge (count 2). The applicant entered a plea of *nolo contendere* and was convicted of misdemeanor assault (count 1). The court sentenced the applicant to 180 days of jail, which was suspended, and three years of summary probation. The applicant's misdemeanor offense does not provide a basis for the termination of his temporary resident status pursuant to section 245A(b)(2)(B) of the Act.

CIS records also indicate that on August 22, 1993, the applicant was arrested by the Hawthorne, California Police Department and charged with infliction of corporal injury against a spouse or cohabitant in violation of section 273.5(a) of the California Penal Code. CIS records further indicate that the Municipal Court of Inglewood convicted the applicant of this charge and sentenced him to 90 days of jail. Section 273.5(a) of the California Penal Code prescribes that this offense is "a felony" and that any person convicted of this crime "shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not more than one year, or by a fine of up to six thousand dollars (\$6,000) or by both." Cal. Penal Code Ann. § 273.5(a) (West 1993). CIS records do not contain a certified copy of the court record or other primary evidence of the applicant's conviction. If the applicant was indeed convicted, his offense would provide another basis for the termination of his temporary residence pursuant to section 245A(b)(2)(B) of the Act, which mandates termination if an alien has been convicted of any felony. Section 245A(b)(2)(B) of the Act, 8 U.S.C. § 1255a(b)(2)(B); 8 C.F.R. § 245a.1((p).

While the director did not address the applicant's criminal record, he properly cited the applicant's failure to timely file an application to adjust to permanent resident status as a valid ground for termination of the applicant's temporary resident status. On appeal, the applicant does not address the basis of the director's decision. The record shows that the applicant's status was properly terminated pursuant to section 245A(b)(2)(C) of the Act and the corresponding regulation at 8 C.F.R. § 245a.2(u)(1)(iv). The applicant's statements on appeal fail to overcome the basis for the termination of his status. Accordingly, the appeal will be dismissed.

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