



U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

L

FEB 12 2007

FILE:

XLA 88 516 6081

Office: CALIFORNIA SERVICE CENTER

Date:

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:

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 "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The termination of the applicant's temporary resident status by the Director, California Service Center, 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 the 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 eligible for adjustment of status to permanent resident because he is married to a United States citizen.

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 17, 1992. The applicant never filed an Application for Adjustment of Status from Temporary to Permanent Resident (Form I-698). The director, therefore, terminated the applicant's temporary resident status on January 19, 2005.

On appeal, counsel for the applicant states the applicant qualifies for adjustment of status because he was married to a United States citizen, [REDACTED] on February 15, 1993.

The applicant's marriage to a United States citizen does not qualify him for lawful permanent residence under section 245a of the Act. In order to qualify for lawful permanent residence under section 245a of the Act, the applicant was required to file a Form I-698, Application for Adjustment of Status from Temporary to Permanent Resident, within 43 months of the date he was granted temporary resident status. To date, the applicant has not filed a Form I-698. Therefore, the director properly terminated the applicant's temporary resident status because he failed to file his Form I-698 within the 43-month application period. The burden to file the adjustment application in a timely manner remains with the applicant. *See* 8 C.F.R. § 245a.3(d).

It is noted that the termination of the applicant's temporary resident status does not preclude the applicant's spouse, [REDACTED], from filing a Form I-130, Petition for Alien Relative, on the applicant's behalf seeking to qualify him as the spouse of a United States citizen.

The applicant is ineligible for temporary residence for the above stated reason.

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