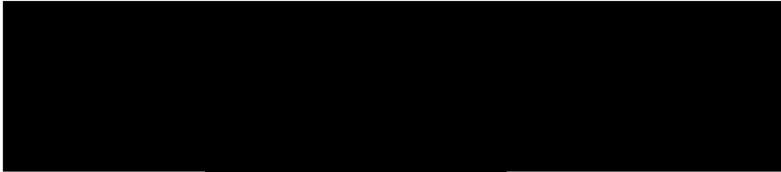


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FILE:

XDA 87 040 2054

Office: NEBRASKA 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:

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 "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The termination of the applicant's temporary resident status by the Director, Nebraska 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, the applicant acknowledges that she failed to file her adjustment application during the 43-month application period. She explains that she failed to file a timely adjustment application due in part due to lack of knowledge and in part to serious health issues.

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 December 9, 1987. The 43-month eligibility period for filing for adjustment expired on July 9, 1991. The Application for Adjustment of Status from Temporary to Permanent Resident (Form I-698) was not received by the Immigration and Naturalization Service, now Citizenship and Immigration Services, until July 31, 2000. The director therefore denied the untimely I-698 application, and subsequently terminated the applicant's temporary resident status.

On appeal, the applicant states that she failed to file a timely adjustment application, in part, due to ignorance. She further states that during the 43-month application period, she and her husband went back to Nairobi, Kenya, "to wind up family business and liquidate family property and assets." She explains that she experienced health problems and ultimately had a quadruple heart bypass surgery in Vancouver, B.C., Canada, where her family resides. She states that, during the same period, her husband underwent a "very complicated and serious brain surgery."

The applicant's statements on appeal have been considered. Nevertheless, there is no waiver, even for humanitarian reasons, for failure to file the Form I-698 within the 43-month application period. As the applicant has not overcome the basis for termination of status, the appeal must be dismissed.

The applicant is ineligible for temporary residence for the above stated reasons, with each considered as an independent and alternative basis for denial.

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