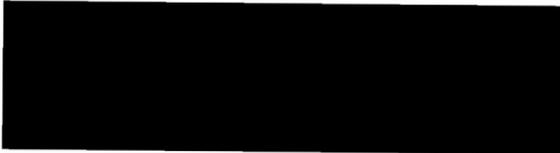


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Services

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JAN 30 2007

FILE:



XRV 88 0274031

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:

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. 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 brief and additional testimonial evidence.¹

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 statute and the regulations do not permit the waiver of untimely filed applications.

The record in this case shows that the applicant was lawfully admitted for temporary residence under section 245A(a)(1) of the Act on October 13, 1988. The applicant did not file a Form I-698, application to adjust status from temporary to permanent resident, until April 23, 2004, nearly 12 years after the 43-month filing period had expired.

On appeal, the applicant claims that he made all reasonable attempts to timely submit his application for adjustment to permanent residence. In his March 5, 2005 declaration submitted on appeal, the applicant states that in 1992 he and his two relatives got notices regarding their need to submit applications to adjust their status. The applicant reports that he went to his relatives' home

¹ An individual representing himself as a law school graduate prepared the appeal. Although the petition is accompanied by a Form G-28, Notice of Entry of Appearance by an Attorney or Representative, the individual did not file a statement regarding his supervision by a licensed attorney or accredited representative and his appearance without remuneration from the applicant, as required by the regulation at 8 C.F.R. § 292.1(a)(2)(iii). The individual also did not submit evidence that since the appeal was filed, he has been admitted to the bar of any state and is now a licensed attorney or an accredited representative. *See* 8 C.F.R. § 292.1(a). Accordingly, the assertions of this individual will not be considered in this proceeding.

where they completed their forms together, purchased money orders together and submitted all three applications together.

The applicant states his recollection that his relatives' applications were later approved and he assumed that his documents "had just been delayed." The applicant states that he lost all of his documentation, including his temporary resident card and was unable to get any information about his case without his alien registration number. The applicant explains that in 2000, he found his old temporary resident card and went to "the offices in Los Angeles where [he] was directed to [redacted] and was told all [he] needed to do was file a new application."

[redacted] the applicant's relative, states that in 1991 she mailed her application for permanent residence along with the applications of her husband and the applicant. Apart from Ms. [redacted] letter, the applicant submits no other documentation to support his claims. He also provides no explanation of the discrepancy between Ms. [redacted] statement and his own regarding the date his application was submitted: Ms. [redacted] states the application was submitted in 1991, the applicant states it was submitted in 1992.

The applicant submitted further evidence regarding his good character, work ethic and social security taxes. This evidence has been reviewed, but is irrelevant to the issue on appeal.

On appeal, the applicant cites two sections of the regulations in support of his claim that his untimely application should have been accepted due to extraordinary circumstances beyond his control. The regulations cited by the applicant are inapplicable to this case. The regulation at 8 C.F.R. §214.1(c)(4) concerns applications for extensions of nonimmigrant stays and the regulation at 8 C.F.R. §248.1 applies to requests to change from one nonimmigrant status to another. These regulations do not apply to the applicant, who was granted lawful temporary residence, an immigrant status, which 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 claims and the evidence submitted on appeal fail to overcome the basis for the termination of the applicant's status. Accordingly, the appeal will be dismissed.

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