



U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY



LI

JAN 31 2007

FILE:



WAC 03 265 50501

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 be "Robert 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 petitioner submits a copy of her statement submitted below.

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 July 20, 1988. Citizenship and Immigration Services (CIS) records contain no indication that the applicant ever submitted or filed a Form I-698, application to adjust status from temporary to permanent residence.

On appeal, the applicant repeats her assertion that she was never informed “that an application for temporary to permanent resident status had not been filed.” The applicant’s statement is equivocal. The applicant does not state or submit any evidence that she properly filed a Form I-698 within the requisite 43-month period. Accordingly, the applicant’s status 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 statement fails to overcome the basis for the termination. Accordingly, the appeal will be dismissed.

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