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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE: [Redacted]
XOX-88-004-3008

Office: CALIFORNIA SERVICE CENTER

Date: JUL 26 2007

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:

[Redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has 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.

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 I-698 application for adjustment of status from temporary to permanent residence within the 43-month application period.

On appeal, the applicant's attorney stated that the applicant timely responded to the Notice of Intent to Terminate (Notice) and requested additional time to submit evidence or a brief. The attorney later submitted a brief in support of the appeal, which argued that the Immigration and Naturalization Service (INS) was obligated to inform the applicant that he could file his Form I-698 application on or before September 16, 1992; that INS, currently Citizenship and Immigration Services (CIS), violated its own regulations by failing to so inform the applicant; and that INS, now CIS, waived its right to reject or deny the Form I-698 and/or terminate the applicant's temporary resident status for failure to timely file his Form I-698. The applicant also submitted an affidavit in support of his appeal.

The status of an applicant lawfully admitted for temporary resident status under section 245A(a)(1) of the Act may be terminated at any time if the applicant fails to file for adjustment of status from temporary to permanent resident on Form I-698 within forty-three months of the date the applicant 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 February 17, 1989. The 43-month eligibility period for filing for adjustment expired on September 16, 1992. The Application for Adjustment of Status from Temporary to Permanent Resident (Form I-698) was received by INS on May 14, 2001. The applicant did not submit proof documenting having filed Form I-698 within 43 months of establishing temporary residence. Therefore, the director found the applicant had not filed a timely application to adjust from temporary to permanent resident status and terminated the applicant's temporary resident status.

On appeal, the applicant claimed that he never received any notification from INS informing him that he must file the Form I-698. The applicant's contention that he was not advised by INS of the need to file Form I-698 cannot be confirmed by a review of the record.

Every temporary resident is responsible for complying with the requirement to file a timely application to adjust from temporary to permanent resident status. INS, as a courtesy, disseminated information about the requirement to file a timely application through the media, reminder notices, and voluntary community organizations. However, INS was not required to ensure that every temporary resident received notification of the need to file a timely application. Furthermore, INS did send notices to applicants' last known addresses, specifically advising them of the requirement. It is noted that the applicant had moved by the time he applied for adjustment to permanent residence, and any prior notices sent to him before he informed INS of his new address may have

been sent to the original address, which would have been the only address INS had for him at that time.

It is further noted that the original eligibility period of 31 months was extended to 43 months to better enable applicants to file timely applications. The burden to file the adjustment application in a timely manner remains with the applicant. *See* 8 C.F.R. § 245a.3(d).

The applicant's statements made on appeal have been considered. As the applicant has not overcome the basis for termination of status, the appeal must be dismissed.

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