



U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE: [Redacted]
XHU 88 155 2337

Office: TEXAS SERVICE CENTER

Date: JUN 12 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. 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.


Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The termination of the applicant's temporary resident status by the Director, Texas 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 asserts that the applicant resubmitted the Form I-698 with the proper filing fee within the 43-month filing deadline.¹

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 November 22, 1988. The 43-month eligibility period for filing for adjustment expired on June 22, 1992. It appears that the Application for Adjustment of Status from Temporary to Permanent Resident (Form I-698) was first received by Citizenship and Immigration Services (CIS) on April 6, 1992. However, the record shows that the applicant's timely application was not accompanied with the full \$120 filing fee. Accordingly, the Service Center returned the application with a notice dated April 14, 1992 informing him of the proper filing fee. Thus, the applicant had more than two months in which to resubmit the adjustment application with the proper filing fee.

On appeal, counsel asserts that the applicant did resubmit the adjustment application in a timely fashion with the proper filing fee. However, the record lacks documentary evidence to support this claim. It is noted that going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

As stated in the Citizenship and Immigration Service's notice dated April 14, 1992, the original eligibility period of 31 months was extended to 43 months to better enable applicants to file timely applications. However, any applicant that chose to file his/her application after the 31-month period, but before the expiration of the 43-month period would be subject to an additional fee. The burden to file the adjustment application in a timely manner remains with the applicant. See 8 C.F.R. § 245a.3(d).

As the applicant has failed to provide documentation to show timely filing of his adjustment application accompanied by the proper filing fee, he has not overcome the basis for termination of status. Therefore, the appeal must be dismissed.

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

¹ Counsel's appeal letter dated December 15, 2005 erroneously refers to the adjustment of status application as the Form I-689. Counsel's typographical error has no bearing on the outcome in this proceeding.