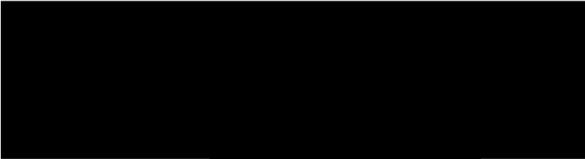




U.S. Citizenship  
and Immigration  
Services

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invasion of personal privacy

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FILE: [REDACTED]  
XDA 88 007 6077

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:



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 has filed several Forms I-698 applications to adjust his status to that of a permanent resident, but claims that Citizenship and Immigration Services (CIS) has been unable to locate any of those applications.

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 August 1, 1988. The 43-month eligibility period for filing for adjustment expired on March 1, 1992. The Application for Adjustment of Status from Temporary to Permanent Resident (Form I-698) was first received by CIS on November 26, 2001. The director therefore denied the untimely I-698 application, and subsequently terminated the applicant's temporary resident status.

On appeal, counsel asserts that the applicant has submitted "several applications over the years" in an attempt to comply with the 43-month deadline for filing timely adjustment of status applications. However, without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. 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). In the present matter, the applicant has provided no documentation to support the claim that he filed any Forms I-698 prior to November 26, 2001.

There is no evidence, nor has counsel claimed, that the applicant was not properly advised of the need to file a timely Form I-698. CIS and private voluntary organizations did widely publicize the requirement of applying for adjustment to permanent residence within the requisite period. Furthermore, CIS did send notices to aliens' last known addresses, specifically advising them of the requirement.

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.