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U.S. Department of Homeland Security
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U.S. Citizenship
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FILE: [REDACTED]
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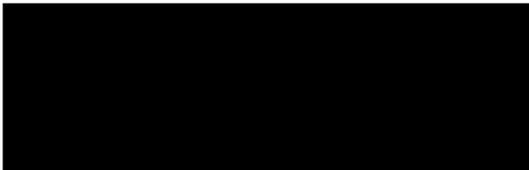
Office: VERMONT SERVICE CENTER

Date: MAR 05 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 temporary resident status by the Director, Vermont Service Center is now 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 apply for adjustment to permanent resident status within the required period.

On appeal, counsel submits a statement and an application to adjust status, Form I-485, with supporting documents.

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 within the prescribed 43-month period. See 8 C.F.R. § 245a.3(b)(1). The statute and regulations do not allow a waiver of untimely filing.

The record in this case shows that the applicant was granted temporary resident status under section 245A(a)(1) of the Act on May 11, 1989. The petitioner did not file a Form I-698, Application to Adjust Status From Temporary to Permanent Resident, until September 20, 2000, which was over seven years after the expiration of the 43-month filing period.

On appeal, counsel states that the applicant “did not receive this notice until April 19, 2005” because it was not sent to his current address. Counsel does not clarify what notice the applicant received on April 19, 2005, the notice of intent to terminate or the notice of termination. Regardless, the record shows that both notices were sent to the applicant's most recent addresses on record at the time. The record is also devoid of any evidence that the applicant informed the agency of his current address prior to the filing of this appeal.

Apart from counsel's assertions regarding the applicant's address and receipt of “this notice,” counsel makes no claims regarding the ground for termination of the applicant's temporary resident status. Counsel does not assert or submit any evidence that the applicant filed an application to adjust status from temporary to permanent resident within his 43-month filing

period. As the applicant did not file his Form I-698 within the requisite 43-month period, his 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. Counsel's statements on appeal fail 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.