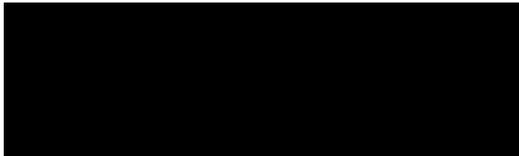


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FILE:



Office: VERMONT SERVICE CENTER

Date: MAR 08 2007

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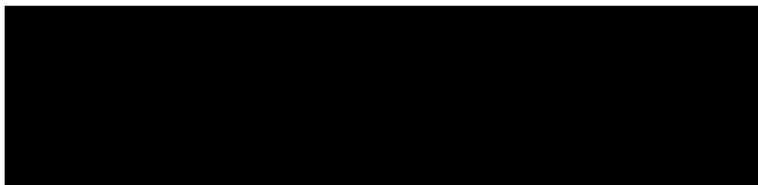
Applicant:



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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The termination of the applicant's temporary resident status by the Director, Vermont 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 for the applicant states that the applicant was always told that "his case was being processed" when he appeared each year at the local Immigration and Naturalization Service (INS) office to renew his employment authorization.

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 October 13, 1989. The 43-month eligibility period for filing for adjustment expired on May 13, 1993. The Application for Adjustment of Status from Temporary to Permanent Resident (Form I-698) was not received INS, now Citizenship and Immigration Services, until August 18, 1997. The director therefore denied the untimely I-698 application, and subsequently terminated the applicant's temporary resident status.

On appeal, counsel for the applicant states that all of the other members of the applicant's family have already adjusted their status from temporary to permanent resident. Counsel claims that the applicant was never advised to file his Form I-698 when he appeared at the local INS office each year to renew his employment authorization. Counsel states that the applicant was always told "that his case was being processed and that there was nothing else that could be done."

Counsel's contention that the applicant was not properly advised when he appeared at the local INS office each year to renew his employment authorization cannot be confirmed by a review of the record. INS and private voluntary organizations widely publicized the requirement of applying for adjustment to permanent residence within the requisite period. Furthermore, INS did send notices to aliens' last known addresses, specifically advising them of the requirement. Additionally, counsel indicates that the other members of the applicant's family have all adjusted their status from temporary to permanent resident. The applicant could have asked any of his family members what he needed to do to apply for adjustment of status.

The burden to file the adjustment application in a timely manner remains with the applicant. There is no waiver, even for humanitarian reasons, for failure to file the Form I-698 within the 43-month application period. As the applicant has not overcome the basis for termination of status, the appeal must be dismissed.

The applicant is ineligible for temporary residence for the above stated reasons, with each considered as an independent and alternative basis for denial.

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