



U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE: [Redacted]
XBI 88 117 1001

Office: NEBRASKA SERVICE CENTER

Date: MAR 15 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, Nebraska 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 asserts that the applicant was never given proper notice of the requirement to file the Form I-698, Application to Adjust Status from Temporary to Permanent Resident, within the 43-month application period.

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 May 24, 1988. The 43-month eligibility period for filing for adjustment expired on December 24, 1991. The applicant's Form I-698 was not received by the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), until June 21, 2001, nine and one-half years after the expiration of the 43-month application period. The director therefore denied the application and terminated the applicant's temporary resident status.

On appeal, counsel for the applicant asserts that the Immigration and Naturalization Service (the Service), now Citizenship and Immigration Services (CIS), sent the notice reminding the applicant that he needed to file his Form I-698, Application to Adjust Status from Temporary to Permanent Resident, within 43 months of the date he was granted temporary resident status to an outdated address. Counsel contends that the applicant was never advised by INS during his legalization interview in 1988 of the necessity to file the Form I-698 during the requisite period.

It does appear that the Service notice reminding the applicant of the necessity to file his Form I-698 in a timely manner was mailed to an outdated address. Nevertheless, the Service and private voluntary organizations widely publicized the procedures of the amnesty program, including the necessity of applying for permanent residence. In addition, if the applicant required assistance in pursuing his application, such assistance was widely available with written inquiries to the Immigration and Naturalization Service, from private nonprofit Qualified Designated Entities, and from private legal assistance resources. The burden to duly file the I-698 application in a timely manner remains with the applicant. See 8 C.F.R. 245a.3(d). Accordingly, counsel's assertion that the decision should be reversed based on the failure of the Service to serve notice is not persuasive.

Counsel's assertions have been considered. Nevertheless, 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.