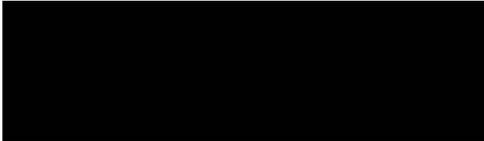




U.S. Citizenship
and Immigration
Services

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prevent clearly unwarranted
invasion of personal privacy



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MAR 30 2007

FILE:



XMA 88 802 4070

Office: VERMONT SERVICE CENTER

Date:

IN RE:

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: SELF-REPRESENTED

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, the applicant states that he never received the notice of intent to terminate or the denial of his Form I-698, Application to Adjust Status from Temporary to Permanent Resident. Although a Notice of Entry of Appearance as Attorney or Representative (Form G-28) has been submitted, the individual is not authorized under 8 C.F.R. § 292.1 or 292.2 to represent the applicant. See <http://usdoj.eoir/statspub/raroster.htm>. Therefore, this decision will be furnished to the applicant only.

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 April 20, 1989. The 43-month eligibility period for filing for adjustment expired on November 20, 1992. The applicant's Form I-698 was not received by the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), until March 17, 2002, ten 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, the applicant states that he never received the notice of denial of his Form I-698 or the notice of intent to terminate his temporary resident status because both notices were mailed to an incorrect address. The applicant states that his address is "Richmond Hills, NY 10029," but the notices were both mailed to "Queens, NY 10029."

The denial decision and the notice of intent to terminate were mailed to the applicant at the address he listed on the Form I-698, "The applicant's failure to receive the notices is of his own making and is not due to any error on the part of CIS.

The issue to be determined in this proceeding is whether the applicant filed his Form I-698 within the 43-month period. As stated previously, the applicant did not file his Form I-698 until ten years after the expiration of the 43-month application period. Therefore, the director's decision to terminate the applicant's temporary resident status will be affirmed.

The applicant's statements on appeal 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.