

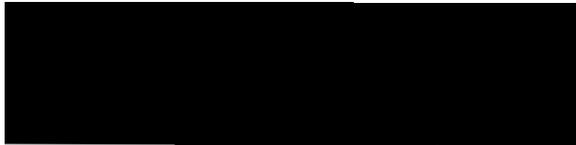


U.S. Citizenship
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FILE: [REDACTED]
XOP 88 002 3124

Office: TEXAS SERVICE CENTER

Date: MAY 04 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 termination of the applicant's temporary resident status was not warranted because it was based on an erroneous denial of the applicant's Form I-698, Application to Adjust Status from Temporary to Permanent Resident, which is precluded by 8 C.F.R. § 245a.3.¹

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 17, 1989. The 43-month eligibility period for filing for adjustment expired on March 17, 1993. Although the director has stated and the applicant has conceded that the Form I-698 was first received by Citizenship and Immigration Services (CIS) on November 26, 2001, the record only contains a Form I-698 that was filed by the applicant on March 2, 2004. Regardless of whether a Form I-698 was filed on November 26, 2001 as suggested, the director determined that the applicant's filing of his Form I-698 was untimely. Based on this finding he denied the application, and subsequently terminated the applicant's temporary resident status.

On appeal, counsel submits a confusing statement suggesting that the director should have reopened and reconsidered the termination on service motion pursuant to 8 C.F.R. § 245a.3(a)(3). Counsel's interpretation of this portion of the regulations, however, is erroneous.

Section 245A(b)(2) of the Act, 8 U.S.C. § 1255a(b)(2), which addresses terminations in the event of untimely filed applications for adjustment of status, states the following:

Termination of temporary residence – The Attorney General 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 above regulation stating that an adjustment application should be reopened if it was denied for lateness applies to applications that were denied because they had not been filed within *31 months* of the approval of temporary residence, but had been filed within *43 months*. The original eligibility period of 31 months was extended to 43 months to better enable applicants to learn English and civics, and file timely applications. There is no requirement that applications properly denied because they were filed after the

¹ Although counsel neglected to specify which subsection of 8 C.F.R. § 245a.3 is relevant, 8 C.F.R. § 245a.3(a)(3) addresses the issue of sua sponte service motions.

expiration of the 43-month period must be reopened. This corresponds to the language of the statute, which clearly provides for termination when applications were not filed within 43 months.

It is noted that 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. Aside from these efforts, which were clearly meant to benefit the applicants, the burden to file the adjustment application in a timely manner remains with the applicant. *See* 8 C.F.R. § 245a.3(d).

The counsel's statements made on appeal have been considered. There is no evidence that the applicant was improperly advised by CIS. 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.