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U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship and Immigration Services

**PUBLIC COPY**

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[Redacted]

FILE:

[Redacted]

Office: CALIFORNIA SERVICE CENTER

Date:

**MAY 15 2007**

XMA 88 810 0158

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, California Service Center, is before the Administrative Appeals Office (AAO) on appeal. The AAO initially reviewed the appeal on October 9, 2001 and remanded the matter back to the service center for further action. A new notice of termination has since been issued. The matter is again before the 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 from the initial termination, counsel asserts that the applicant was not aware that she was granted temporary resident status.

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 February 27, 1992. The 43-month eligibility period for filing for adjustment expired on September 27, 1995. There is no evidence on record that the applicant filed an Application for Adjustment of Status from Temporary to Permanent Resident (Form I-698). The director therefore terminated the applicant's temporary resident status.

On appeal, counsel claims that the applicant was not aware that she was granted temporary resident status and therefore was unaware of the deadline for filing for adjustment in a timely fashion. However, the record contains two letters, one dated December 6, 1997 and another dated May 1, 1998, which the applicant sent to Citizenship and Immigration Services (CIS) in an attempt to get an update of her pending legalization matter. In each correspondence, the applicant acknowledged having received an employment authorization card as well as her temporary residence card. Thus, the fact that the applicant acknowledges that she was issued a temporary resident strongly suggests that the applicant must have been aware that the application for temporary residence, Form I-687, had been approved. While the applicant may not have fully understood the significance of having received a temporary residence card, the fact that the card was issued indicates that the applicant was informed of the approval of her application.

Regarding counsel's contention that the applicant was not properly advised, this claim be confirmed by a review of the record. 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. While it is clear that the applicant attempted to obtain a status update of her legalization matter, neither correspondence suggests that the applicant was unaware that her temporary resident status application had been approved, particularly in light of her acknowledged receipt of her temporary residence card.

It is further noted that the original eligibility period of 31 months was extended to 43 months to better enable applicants to file timely applications. The burden to file the adjustment application in a timely manner remains with the applicant. *See* 8 C.F.R. § 245a.3(d).

The applicant's statements made on appeal have been considered. However, it is not apparent 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.