U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

OCT 18 2007

FILE: [redacted] Office: TEXAS SERVICE CENTER Date:
SRC-05-215-50749

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: SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has 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 application for Temporary Resident Status was terminated by the Director of the Texas Service Center and that decision is now before the Administrative Appeals Office on appeal. The appeal will be rejected.

The Service sent the applicant a notice indicating that she could apply for Permanent Resident Status at her address of record and then another notice reminding her to apply for adjustment of Status on March 10, 1991. The record shows that this reminder notice was returned to the Service on April 17, 1991 as undeliverable. On April 8, 2005 the applicant's attorney and the applicant were sent letter from the Service informing her that if the Service did not receive her application to adjust status to that of a Permanent Resident within sixty (60) days it would be determined that she did not want to adjust status and her status as a Temporary Resident would be terminated. The record shows that the copy of the letter that was sent to the applicant's attorney was returned as undeliverable. However, the record does not indicate whether the copy of this letter that was sent to the applicant was delivered or not. It is noted that it was sent to her address of record at the time. On August 15, 2005 the applicant was sent a Notice of Intent to Terminate to her address of record. This letter informed the applicant that she was granted Temporary Resident Status on June 22, 1988 and applicants who are granted Temporary Resident Status are granted forty-three (43) months from the date they are granted to file an application for adjustment of status or they will be terminated pursuant to the Immigration and Nationality Act (Act) § 245A(b)(2)(C). The director noted that her office had determined that the applicant had exceeded the time allowed for applicants who have Temporary Resident Status to adjust status to that of a Legal Permanent Resident. She went on to say that the applicant's Temporary Resident Status would be terminated unless she presented evidence that was sufficient to establish that it had been less than forty-three (43) months since her Temporary Resident Status had been granted. As the applicant did not submit evidence to overcome the director's grounds for termination, the director terminated her status as a Temporary Resident on September 23, 2005.

On appeal the applicant states that she has continuously resided in the United States since October of 1979. It is noted here that the record contains credible evidence in support of the applicant's claim of having maintained residency. She goes on to say that she went to a notary to file her papers with the Service and he told her that he would file for her but he did not. The applicant further states that she did have copies of the application she completed in 1990, but due to her apartment flooding after hurricane Allison, her papers were lost. She asserts that he has never received prior notification that her status would expire in 1992 unless she applied to adjust status to that of a Permanent Resident. It is noted here that the record does support that at least one copy of both notices in the record that the Service attempted to send to the applicant regarding her need to adjust status to that of a Permanent Resident were returned to the Service as undeliverable.

An adverse decision regarding Temporary Resident Status may be appealed to the Administrative Appeals Office. Any appeal with the required fee shall be filed with the

Service Center within thirty (30) days after service of the notice of denial. An appeal received after the thirty-day period has tolled will not be accepted. *See* 8 C.F.R. § 245a.2(p). Pursuant to 8 C.F.R. § 103.5a(b), whenever a person has the right or is required to do some act within a prescribed period after the service of notice upon him and the notice is served by mail, three days shall be added to the prescribed period. Service by mail is complete upon mailing. If the last day of the period so computed falls on a Saturday, Sunday or a legal holiday, the period shall run until the end of the next day which is not a Saturday, Sunday, nor a legal holiday. 8 C.F.R. § 1.1(h).

The director issued her Notice of Termination on September 23, 2005 and mailed it to the applicant's address of record. The applicant's appeal was first received Thursday, October 27, 2005, thirty-four (34) days after the Notice of Termination was issued. The record shows that the applicant's I-694 Notice of Appeal of Decision was rejected because it was not submitted with the correct fee. The applicant's Form I-694 was resubmitted with the correct fee on April 6, 2006, one hundred ninety-five (195) days after the director issued her Termination. As the appeal was untimely filed upon its first submission, it must be rejected.

ORDER: The appeal is rejected.