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

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FILE:



Office: NEBRASKA SERVICE CENTER

Date: **AUG 29 2008**

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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The applicant was granted lawful temporary resident status on September 30, 1988 pursuant to Section 245A of the Immigration and Nationality Act (the Act). The applicant's application to adjust status from temporary to permanent resident was denied by the director, Nebraska Service Center, due to the applicant's failure to file an application for permanent resident status under section 245A(b)(1) of the Act by the end of 43 months from the date of actual approval of the Form I-687 Application for Status as a Temporary Resident. The applicant appealed the denial to the Administrative Appeals Office (AAO). On appeal, the AAO noted that the director's decision stated "[t]he actual approval date of your temporary resident application was September 30, 19[8]8." The AAO further noted that the record of proceeding did not "contain any indication that the applicant was granted temporary residence on such date" (September 30, 1988). The AAO remanded the matter with instructions for the director to incorporate into the record documentation showing the approval date. The director has included in the record of proceeding United States Citizen and Immigration Services (CIS) records establishing that the applicant was granted lawful temporary resident status on September 30, 1988 pursuant to Section 245A of the Act. The director's denial of the applicant's temporary resident status is now before the AAO on appeal. The appeal will be rejected.

As previously stated, the director denied the application to adjust from temporary to permanent resident because the appellant failed to file a Form I-698 Application to Adjust Status from Temporary to Permanent Resident by the end of the 43rd month beginning after the date the appellant was granted temporary resident status as required by Section 245A(b)(2) of the Act, 8 C.F.R. § 1255a(b)(2). On appeal, the appellant states that he was never told that he had to file a separate application to receive his permanent residency, or that he would lose his opportunity to apply for permanent residency if he missed a deadline.

Pursuant to section 245A(f) of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a(f), no denial of adjustment of status under this section based on a late filing of an application for such adjustment may be reviewed by a court of the United States or of any State or reviewed in any administrative proceeding of the United States Government.

The Administrative Appeals Office is without authority to review the denial of the application, and the appeal is hereby rejected.

ORDER: The appeal is rejected.