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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

41

FILE:

XMA 88 142 8038

Office: VERMONT SERVICE CENTER

Date: FEB 04 2008

IN RE:

Applicant:

APPLICATION:

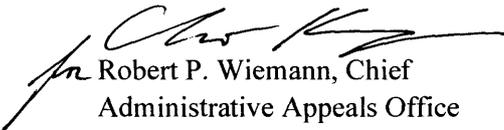
Application for Status as a Temporary Resident pursuant to Section 245A of the  
Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:

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 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 asserts that he was not informed of the 43-month filing deadline and claims that Citizenship and Immigration Services (CIS) may have been unaware of the applicant's address change. The applicant provides an appellate brief in support of his statements on appeal.

The status of an alien lawfully admitted for temporary residence under section 245A(a)(1) of the Immigration and Nationality 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 September 14, 1989. The 43-month eligibility period for filing for adjustment expired on April 14, 1993. The Application for Adjustment of Status from Temporary to Permanent Resident (Form I-698) was first received on September 2, 1997. The director therefore denied the untimely I-698 application, and subsequently terminated the applicant's temporary resident status.

On appeal, the applicant claims that a CIS notice dated March 25, 1999 was mailed to his expired address. However, this contention is unsupported either by the record or by the applicant's submissions. Contrary to the applicant's claim, a copy of the purported notice is not among the supporting documents submitted on appeal.

The applicant also stresses his family ties in the United States and discusses the civil unrest in his home country. However, the AAO does not have the discretionary authority to overlook the applicant's untimely filing of his Form I-698 based on humanitarian grounds.

Lastly, while the applicant claims that he was never informed of the filing deadline, the AAO notes that CIS and private voluntary organizations did widely publicize the requirement of applying for adjustment to permanent residence within the requisite period. Furthermore, CIS sent notices to aliens' last known addresses, specifically advising them of the requirement. It is noted that the applicant had moved by the time he applied for adjustment to permanent residence, and any prior notices sent to him may have been sent to the original address, which would have been the only address CIS had for him.

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. 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.