



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED]
XP0 88 166 2099

Office: CALIFORNIA SERVICE CENTER

Date FEB 27 2008

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, was certified to the Administrative Appeals Office (AAO) for review. The director's decision to terminate the applicant's temporary resident status will be affirmed.

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 for the applicant states that the applicant's failure to file a timely Form I-698, Application to Adjust Status from Temporary to Permanent Resident, was due to the fact that she was a minor child and a ward of the Juvenile Court of Los Angeles, California, during the 43-month application period. Counsel explains that responsibility to file the Form I-698 on the applicant's behalf rested with California Protective Services. Counsel submits documentation in support of his statements.

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 September 8, 1988. The 43-month eligibility period for filing for adjustment expired on April 8, 1992. The applicant's Form I-698 was not received by the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), until July 12, 2004. The director therefore denied the application and terminated the applicant's temporary resident status.

On appeal, counsel for the applicant explains that the applicant, her sister, and her brother were taken into protective custody and made wards of the Juvenile Court of Los Angeles, California, in January 1986, because the applicant's father had recently sexually molested the applicant's older sister, [REDACTED]. Counsel states that the applicant was nine years old when she was taken into protective custody and made a ward of the court. Counsel contends that the Immigration and Naturalization Service (the Service), now Citizenship and Immigration Services, has the authority to "waive late filing defects that were caused by extraordinary circumstance."

Counsel submits a court disposition document reflecting that the applicant's father, [REDACTED] plead guilty to one count of child molestation in violation of section 288(a) of the California Penal Code, a felony, in the Superior Court of California, County of Los Angeles, on October 10, 1986. [REDACTED] was sentenced to serve three years. Counsel states that the applicant's father was finally removed from the United States in January 2004.

Counsel also provides a letter dated November 4, 2004, from [REDACTED] Supervising Children's Social Worker, Department of Children and Family Services, County of Los Angeles, State of California, stating that the applicant became a ward of the juvenile court on January 13,

1986, as a result of child abuse allegations against her parents. further states that the applicant and her sister, [REDACTED] were placed in foster care and were twice returned to the care of their parents, but the parents re-abused and neglected the applicant and her sister and failed to keep custody of them. [REDACTED] explains that the children were ultimately ordered into long-term foster care. [REDACTED] indicates that the International Foster Children's Unit (ICFU), now the Special Immigrant Status Unit, filed Forms I-698 on behalf of both the applicant and her sister [REDACTED], but only [REDACTED] was able to obtain lawful permanent residence because the applicant's foster mother failed to transport her to her appointments with the Service.

Additionally, counsel provided affidavits from the applicant's siblings and mother stating that they all obtained lawful permanent resident status and are now naturalized United States citizens, along with photocopies of their naturalization certificates.

Counsel also provided a statement from the applicant in which she states:

Between 1988 and 1993 (between the ages of 12 and 14), while in foster care, someone with Social Services helped me with my immigration papers. . . .

In 1995 I moved to San Jose at the age of 18, and I would visit the San Jose Immigration office every year. . . . During my annual visits an INS officer would place a sticker on my temporary resident card (which expired on November 30, 1990). The sticker says "INS has extended the validity of this card until the last year of this date indicated, the last sticker placed on my card expiring in August of 2001. Every year I went in to get the sticker. I recall some of the clerks would say see you next year. I never received any mail regarding any intent to terminate my temporary residency. Nor was I ever informed of a pending deadline when I went in for renewal stickers. . . .

After September 11, 2001, because my sticker had expired I went to the INS office here in Sacramento again. . . . It was then that I was told stickers were no longer issued.

The applicant explained that an officer in the Sacramento office assisted her in filing a Form I-698 in 2004. Finally, the applicant states that she is now the mother of a six-year-old child born in this country and the possibility of the termination of her temporary resident status has caused her a great deal of stress.

The applicant's statements on appeal have been considered. Unfortunately, there is no provision in the statute or the regulation for a waiver, even for humanitarian reasons, for failure to file the Form I-698 within the 43-month application period. As the applicant has not overcome the basis for termination of status, the appeal must be dismissed.

It is noted that the dismissal of this appeal does not preclude the filing of an immigrant visa petition on the applicant's behalf.

The applicant is ineligible for temporary residence for the above stated reasons, with each considered as an independent and alternative basis for denial.

ORDER: The director's decision is affirmed. This decision constitutes a final notice of ineligibility.