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**U.S. Citizenship
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[REDACTED]

FILE: [REDACTED]
MSC 06 360 10140

Office: CALIFORNIA SERVICE CENTER

Date: **JUL 29 2008**

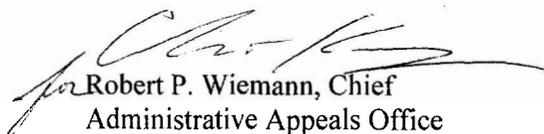
IN RE: Applicant: [REDACTED]

APPLICATION: Application for Adjustment from Temporary to Permanent Resident Status under 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. 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.


for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for adjustment from temporary to Permanent Resident Status was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant's status as a temporary resident had been terminated on February 25, 1997 and therefore the director determined the applicant was not eligible to adjust to Permanent Resident Status.

On appeal, the applicant states that that she previously appealed the termination of her Temporary Resident Status on May 16, 1997. She states that she submitted this previous appeal because she did not receive a Notice of Intent to Terminate and was, therefore, unaware that the former Immigration and Naturalization Service (INS) now Citizenship and Immigration Services (CIS) had asked her to submit additional evidence.

Any applicant who has been lawfully admitted for Temporary Resident Status under section 245A(a) of the Immigration and Nationality Act (Act), that status not having been terminated, may apply for adjustment of status of that of an applicant lawfully admitted for permanent residence. 8 C.F.R. § 245a.3(b).

Temporary Resident Status shall be terminated at the end of the 43rd month beginning after the date the applicant is granted such status, unless the applicant has filed an application for adjustment of such status pursuant to section 245A(b)(1) of the Act and such status has not been denied. Immigration and Nationality Act (Act) § 245A(b)(2)(C).

Before termination of an applicant's Temporary Resident Status, the applicant must be given an opportunity to offer evidence in opposition to the grounds alleged for termination of his or her status. Evidence in opposition must be submitted within 30 days after the service of the Notice of Intent to Terminate. 8 C.F.R. § 245a.2(u)(iv)(2)(i).

An applicant may appeal a decision to terminate his or her Temporary Resident Status to the AAO; the appeal with the required fee must be filed within thirty (30) days after service of the notice of termination. 8 C.F.R. § 245a.2(u)(iv)(2). If the decision, or notice of termination, was mailed, the applicant is afforded an additional three (3) days, and the appeal must be filed within thirty-three (33) days. 8 C.F.R. § 103.5a(b). The date of filing is not the date of mailing, but the date of actual receipt. 8 C.F.R. § 103.2(a)(7)(i).

In this case, the applicant's Temporary Resident Status was granted on December 29, 1992. The former INS, now CIS, received her Form I-698 Application to Adjust Status from Temporary to Permanent Resident on November 18, 1996, or 46 months and 20 days after the applicant's Temporary Resident Status was granted.

The director denied the applicant's Form I-698 application on December 3, 1996 because the applicant had not filed her application for Permanent Resident Status by the end of the 43rd month from the date her Temporary Resident Status was granted as Act § 245A(b)(1) states that applicants

must do to obtain this benefit. This caused the applicant to be ineligible to adjust status pursuant to the regulation at 8 C.F.R. § 245a.3(c)(3). The director mailed this decision to the applicant at her address of record.

The director also issued a Notice of Intent to Terminate (NOIT) the applicant's Temporary Resident Status and mailed it to the applicant's address of record on December 3, 1996. In her NOIT, the director noted that the applicant's Form I-698 had been denied by her office because it was submitted more than 43 months after the applicant was granted Temporary Resident Status. The director went on to say that because the applicant failed to apply to adjust to Permanent Resident Status timely, the director intended to terminate her Temporary Resident Status. The director granted the applicant 30 days within which to submit evidence to overcome that ground for ineligibility.

The director issued Notice of Termination on February 25, 1997 and mailed it to the applicant's address of record. In terminating the applicant's status, the director stated that the applicant failed to submit evidence that overcame the director's reasons for termination as stated in her NOIT.

The applicant appealed the termination of her status as a temporary resident on May 16, 1997, 80 days after the director issued her notice of termination. Therefore, the appeal was not timely filed and has been rejected.

The applicant submitted a second Form I-698 that was received by CIS on September 11, 2006. The director denied this second Form I-698 on June 15, 2007 because she found that because the applicant's Temporary Resident Status had previously been terminated, she was not eligible to adjust to Permanent Resident Status pursuant to the regulation at 8 C.F.R. § 245a.3(b).

On appeal, the applicant states that she is appealing the director's decision of June 15, 2007 to deny her Form I-698. She asserts that she has appealed the decision to terminate her status as a temporary resident. She states that she appealed this decision because she failed to receive the director's Notice of Intent to Terminate. Therefore, she states that she was not able to submit additional evidence in support of that application.

The AAO has reviewed the evidence in the record and has found that the director followed proper procedures when she terminated the applicant's status as a temporary resident. The director issued a NOIT to the applicant and sent it to her address of record and granted her 30 days within which to submit additional evidence. The applicant did not submit any additional evidence in response to this NOIT. Though the applicant appealed the director's decision to terminate her Temporary Resident Status, the Form I-694 on which she did so indicates that she did so untimely.

The applicant has not submitted evidence that overcomes her failure to submit her original Form I-698 within 43 months of being granted Temporary Resident Status. Therefore, the director properly denied her first Form I-698 application and also properly terminated her status as a temporary resident. Her second Form I-698 was filed on September 11, 2006, which is nine years, six months and 17 days after the applicant's initial Temporary Resident Status was granted. Because the

applicant does not have Temporary Resident Status, she is not eligible to adjust to Permanent Resident Status.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.