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FILE: [REDACTED]
XSD 88 216 04028

Office: CALIFORNIA SERVICE CENTER

Date: JUN 10 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: 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, California Service Center, is before the Administrative Appeals Office on appeal.¹ 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 disputes the director's decision, asserting that the untimely filing of his application for permanent resident status was not his fault.

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 12, 1988. The 43-month eligibility period for filing for adjustment expired on April 12, 1992. The Application for Adjustment of Status from Temporary to Permanent Resident (Form I-698) was first received by Citizenship and Immigration Services (CIS) on October 24, 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 he did not apply for adjustment in a timely fashion because he had not been properly advised of the need to do so and was not aware of the consequences of an untimely filing. The applicant also claims that he made several attempts to file the Form I-698 by going to a service center in San Diego, California, but was always told to wait. However, there is no documentary evidence to support the claim that the applicant was repeatedly misinformed by employees at the service center.

Additionally, the applicant claims that he was under the assumption that an application for permanent residence had been filed. However, this claim is inconsistent with his prior statement that he was discouraged from filing an application.

In general, the applicant's contention that he was not properly advised when he appeared at a service office simply cannot be confirmed by a review of the record. CIS and private voluntary organizations did widely publicize the requirement of applying for adjustment to permanent residence within the requisite period. Furthermore, CIS did send 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).

¹ The record shows that the AAO remanded this matter on January 29, 1999 on the basis that the date cited in the director's decision to reflect the approval of the application for temporary resident status was not in the record. The director was instructed to supplement the record with documentation reflecting the relevant date of approval. The director has since complied with the AAO's instruction. Accordingly, the record has been returned to the AAO for full adjudication of the appeal. The applicant has not provided further documentation in support of the appeal. Therefore, this decision will be based on the record as presently constituted.

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.