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U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

FILE:

XPO 87 082 4035

Office: CALIFORNIA SERVICE CENTER

Date: MAR 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 applicant's temporary resident status was terminated by the Director, California Service Center, and is now 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 his application for permanent resident status within the permitted 43-month time period.

On appeal, the applicant's niece submits a statement on the applicant's behalf explaining the reason for the applicant's untimely filing of his application for permanent resident status.

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 May 21, 1988. The 43-month eligibility period for filing for adjustment expired on December 21, 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 March 7, 1996. The director therefore denied the untimely I-698 application, and subsequently terminated the applicant's temporary resident status.

On appeal, the applicant's niece explains that the applicant remained in Mexico for an extended period due to health complications related to an accident he had during a visit. She also explains that when the applicant returned to the United States in 1992, he was unaware that his legalization case may still be viable and pending with Citizenship and Immigration Services, which resulted in his not filing a timely Form I-698 to adjust from temporary to permanent resident status.

However, 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 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).

Thus, while the explanation provided on appeal has been considered, the untimely filing appears to have resulted from the applicant's failure to seek information relevant to his immigration matter. If the applicant returned to the United States in 1992 as claimed on appeal, he could have still filed a timely application to adjust his status to that of a permanent resident. It is not apparent that his failure to do so was due to his having been 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.