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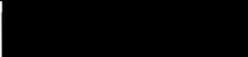
U.S. Citizenship
and Immigration
Services

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FILE:



Office: CHICAGO

Date:

MAR 12 2008

XLS-89-217-0029

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:



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 Acting District Director, Chicago, is before the Administrative Appeals Office (AAO) 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, counsel for the applicant asserts that the applicant submitted a Form I-698, Application to Adjust Status from Temporary to Permanent Resident, on September 15, 1992.

The applicant was granted temporary resident status on August 26, 1992 under section 245A of the Immigration and Nationality Act (Act), as amended, 8 U.S.C. § 1255a. The applicant was required to file an application to adjust status from temporary to permanent resident within forty-three (43) months of receiving his temporary resident status. *See* 8 C.F.R. § 245a.3(b)(1). The 43-month eligibility period for filing for adjustment of status expired on March 26, 1996. Pursuant to section 245A(b)(2)(C) of the Act, 8 U.S.C. § 1255a(b)(2)(C), a failure to file an application for adjustment to permanent residence within this statutory filing period will result in the termination of the applicant's temporary residence.

On April 3, 2006, the director issued a notice of intent to terminate the applicant's status as a temporary resident. The director found that there was no evidence in the applicant's record that he filed a Form I-698 application. The applicant was afforded thirty (30) days to submit evidence to overcome the basis for the proposed termination.

In rebuttal, counsel for the applicant asserted that the applicant, through the assistance of the Polish Welfare Association, filed his Form I-698 with the Immigration and Naturalization Service (the Service) on September 15, 1992. Counsel provided a copy of the applicant's Form I-698, which contains a date stamp of September 15, 1992. Counsel further asserted that the Service issued the date stamp on the applicant's Form I-698.

On May 23, 2006, the director issued a notice of termination of the applicant's status as a temporary resident. The director found that upon review, the evidence the applicant provided is not credible to support his claim that he timely filed a Form I-698. The director noted that a complete review of the applicant's record fails to show any evidence that he filed this application.

On appeal, counsel for the applicant reiterates that the applicant submitted a Form I-698 on September 15, 1992. Counsel maintains that this application was filed with the assistance of the Polish Welfare Association and it contains a September 15, 1992 date stamp from the Service. Counsel resubmits a copy of the applicant's Form I-698, which contains the aforementioned date stamp.

The Service's electronic database and the applicant's physical record do not show any evidence that he filed a Form I-698. The applicant submitted a copy of a Form I-698 he claims was filed with the Service. However, the applicant has failed to provide any other information on the filing of this application, such as where it was filed. Counsel maintains that the applicant's Form I-687 contains an "INS date stamp" of September 15, 1992. The stamp at issue is a generic date stamp that is not particular to the Service. This stamp does not provide any specific information on the filing location of the applicant's Form I-698. Consequently, the stamp by itself is not proof that the applicant actually filed a Form I-698 with the Service on September 15, 1992.

In conclusion, there is no evidence that the applicant timely filed an application to adjust status to permanent resident within the allotted time period. 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.