

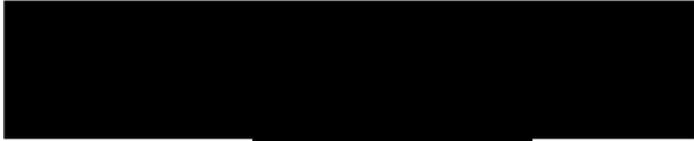
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U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529-2090  
MAIL STOP 2090



U.S. Citizenship  
and Immigration  
Services

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FILE:



SRC-08-028-50263

Office: MIAMI

Date: NOV 07 2008

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: 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The District Director, Miami, terminated the applicant's temporary resident status. The matter is now 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 apply for adjustment to permanent resident status within the required period.

On appeal, the applicant requests reconsideration of the termination of her temporary resident status.

Section 245A(b)(2) of the Act states, in pertinent part:

*Termination of temporary residence.* – The [Secretary of Homeland Security] shall provide for termination of temporary resident status granted an alien under subsection (a) –

\* \* \*

(C) at the end of the 43<sup>rd</sup> month beginning after the date the alien is granted such status, unless the alien has filed an application for adjustment of such status pursuant to paragraph (1) and such application has not been denied.

The corresponding regulation at 8 C.F.R. § 245a.2(u)(1)(iv) further prescribes that 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 “[t]he alien fails to file for adjustment of status from temporary resident to permanent resident on Form I-698 within forty-three (43) months of the date he/she was granted status as a temporary resident[.]” The applicant bears the burden to timely file the application for adjustment from temporary to permanent resident status within the prescribed 43-month period. See 8 C.F.R. § 245a.3(b)(1). The statute and regulations do not allow a waiver of untimely filing.

The record in this case shows that the applicant was granted temporary resident status under section 245A(a)(1) of the Act on August 8, 1988. The record also shows that the applicant had until August 8, 1991 in which to file her Form I-698, Application to Adjust Status from Temporary to Permanent Resident. The record shows that the applicant initially filed her Form I-698 application on May 24, 1991. However, the application was considered incomplete and the applicant was sent a notice to comply on July 8, 1991 because she had failed to pay the proper application fee, failed to sign the application, and had failed to check the box at part # 18 of the application. The applicant responded to the request on December 23, 1991. The Service Center sent the applicant a second notice to comply on December 27, 1991, requesting that she submit a new money order in the amount of \$120.00 due to the fact that she had missed the original filing deadline. The applicant's Form I-698, application was last received on April 30, 1993, which the director considered to be over twenty months after the prescribed 43-month filing period had expired.

On appeal, the applicant states that she did in fact submit her Form I-698 application within the forty-three month period, and that she was not directed by the Service Center to send proof of the same. She further states that if she had been instructed to submit proof of her May 24, 1991 filing,

she would have.

In the instant case, the applicant failed to file an application for adjustment of status by the end of the 43<sup>rd</sup> month after she was granted temporary resident status. Although she claims that her I-698 application was filed on May 24, 1991, it was not filed as a completed application until April 30, 1993. Accordingly, the applicant's status was properly terminated pursuant to section 245A(b)(2) of the Act and the corresponding regulation at 8 C.F.R. § 245a.2(u)(1)(iv). In her September 29, 2007 decision, the director properly set forth this valid basis for termination of the applicant's status. The applicant's statement on appeal fails to overcome the basis for the termination. Accordingly, the appeal will be dismissed.

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