

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

61

FILE:

SRC-06-156-50413

Office: TEXAS SERVICE CENTER

Date:

OCT 03 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:

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.

for Michael T. Kelly
for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The termination of temporary resident status by the Director, Texas Service Center is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

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, counsel states that the applicant never received notice of his need to file an adjustment application. Counsel claims that the applicant did not apply for adjustment in a timely fashion because he was not advised of the need to do so because each time that the applicant was given a new employment authorization card, the applicant was told that "his application was pending and that he should wait to receive something in the mail." Counsel also submitted copies of the applicant's employment authorization cards.

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 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 August 22, 1989. The 43-month eligibility period for filing for adjustment expired on March 22, 1993. The Application for Adjustment of Status from Temporary to Permanent Resident (Form I-698) was first received by INS on June 12, 2006. The director therefore denied the untimely I-698 application, and subsequently terminated the applicant's temporary resident status.

As counsel points out, on December 20, 1990, INS field offices were sent the following instructions in IMMACT '90 Wire #16 Cable 1588-C: "All field sites should be advised to extend an I-688 when an alien is encountered *and* it has been less than 42 months since that alien was granted temporary resident status...A check of the LAPS database will provide the actual approval date of the temporary resident application. *The alien should be advised that he/she has X amount of time left to apply for permanent residence.* (emphasis supplied) Aliens should be provided with another M-306, a temporary resident's guide to applying for permanent residence..."

The Form I-688 referred to in the wire is the card signifying temporary resident status that was issued to legalized aliens. It served as an employment authorization card as well. It was commonly referred to by the alien applicants as a work card or work permit.

In his declaration the applicant states, in pertinent part:

I received my temporary resident card in 1989. I would use it to work. When it expired I went to INS in Houston to get another and they would always give me one. I asked the officers what was happening with my card [and] they said to wait and I would get a letter in the mail. I always did what INS told me to do. They said I should file some applications and I did file them.

Counsel declares that CIS personnel in this case were not acting in accordance with the instructions in the wire. Given the applicant's detailed account of what transpired and the evidence submitted on appeal, it does appear that CIS personnel were not in compliance with the IMMACT '90 wire cited above since the applicant continued to receive extensions of Form I-688 for employment authorization right through the end of the 43-month application period and for years beyond. The applicant should not have continued to receive extensions; by virtue of the fact that he did, it can be concluded that the CIS employees in this case were also not adhering to the basic instruction to advise the applicant as to how and when to apply for adjustment. (We note that the particular facts and evidence in this case lead to such a conclusion. We do not hold that all claims of insufficient or improper advice rendered by CIS will be deemed credible.)

Due to CIS error, we find that the application for adjustment to permanent residence should rightfully be considered timely filed. Accordingly, the denial of the application, and the termination of temporary resident status, are withdrawn.

ORDER: The appeal is sustained. The application for adjustment to permanent residence shall be adjudicated.