



U.S. Citizenship
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Services

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[REDACTED]

FILE: [REDACTED]
WAC-04-245-50367

Office: CALIFORNIA SERVICE CENTER

Date: SEP 26 2008

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Temporary Resident Status under Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has 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 (AAO) on appeal. The appeal will be dismissed.

The director terminated the applicant's temporary resident status because he found that the applicant's Form I-698 Application to Adjust Status from Temporary to Permanent Resident Status was not filed within 43 months after the approval of his application for temporary resident status. Specifically, the record reveals that the applicant was granted lawful temporary resident status on October 21, 1988 under Section 245A of the Immigration and Nationality Act. The applicant then filed Form I-698 to adjust status from temporary to permanent on November 12, 1992.

On April 14, 2005, Citizenship and Immigration Services (CIS) issued a Notice of Termination. The director noted that the status of an applicant lawfully admitted for temporary resident status under section 245A(a)(1) of the Act may be terminated at any time if the applicant fails to file for adjustment of status from temporary to permanent resident status on Form I-698 within forty-three months of the date the applicant was granted status as a temporary resident under § 245a.1 of this part. 8 C.F.R. § 245a.2(u)(1)(iv).

Thus, the 43-month eligibility period for filing for adjustment expired on May 20, 1992. On November 9, 2004, CIS issued a Notice of Intent to Terminate the applicant's temporary resident status because the I-698 application was not filed within the 43 month eligibility period. Also on that day, CIS sent a Notice of Decision denying the application to adjust status from temporary to permanent resident status indicating that the applicant's temporary status has terminated for failure to timely file the adjustment case and therefore, the applicant was not eligible for adjustment on that basis.

In response, the applicant indicated that he received two different letters from CIS dated November 9, 2004. The letters were both addressed to the applicant, [REDACTED] however, they contained two different alien numbers. The first, the Notice of Intent to Terminate, was addressed to the applicant with the alien number correctly referenced as A92 826 838. This Notice apprised the applicant that he had failed to promptly file his Form I-698 within the required time period and granted him a period of thirty (30) days to submit evidence in rebuttal to the proposed termination of his temporary resident status.

The second Notice, also addressed to the applicant, contained an erroneous alien number, [REDACTED]

This letter indicated that the adjustment application was denied because the applicant failed to file his application to adjust from temporary to permanent resident status within the required time period. The applicant asserts, in response to the Notice of Intent to Terminate, that the receipt of two notices with different alien numbers "presents a matter of great confusion to [REDACTED] **No evidence** was submitted to rebut the director's finding that the Form I-698 was untimely filed. Therefore, the director found the applicant had not filed a timely application to adjust from temporary to permanent resident status and terminated the applicant's temporary resident status in the notice dated April 14, 2005.

The applicant's statements made on appeal have been considered. The applicant has presented no evidence that he properly filed Form I-698 during the 43-month eligibility period.

Counsel claims that the regulation at 8 C.F.R. § 245A.3(a)(2) means that no Form I-698 may be denied for the applicant's failure to file the Form I-698 within the 43-month period. Counsel's interpretation of this regulation is, however, incorrect. The regulation states that the Service may not deny a Form I-698 before the end of the 43-month period for the reason of "failure to file timely." The regulation at 8 C.F.R. § 245a.3(b)(1) specifically references the 43-month filing timeframe and 8 C.F.R. § 245a.2(u)(1)(iv) states that failure to apply within 43 months of the date of being granted temporary residence status is a ground for termination. Accordingly, counsel's statements on appeal are unpersuasive. The applicant was required but failed to submit an application for permanent residence within 43 months after his grant of temporary residence status, therefore, his temporary residence status is terminated. 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.