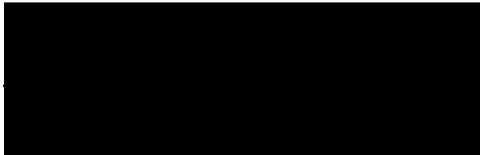


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and Immigration
Services

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LA

FILE:



Office: California Service Center

Date: **SEP 28 2005**

IN RE:

Applicant:



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: 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.

A handwritten signature in cursive script, appearing to read "Jullian".

Robert P. Wiemann, Director
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 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, the applicant states that, around 1993 or 1994, she was given an application for a permanent resident card by an Immigration and Naturalization Service (INS) employee, which she filed. Earlier, in response to the letter of intent to terminate, the applicant stated that she did not intentionally fail to apply for adjustment to permanent resident status, and explained that she had been waiting for the INS to advise her. She further indicated that she lost her temporary resident card and, although she applied for a duplicate, never received a reply. She also stated that she never received a letter from INS advising her to file the appropriate application.

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 (43) months of the date he/she was granted status as a temporary resident. See 8 C.F.R. § 245a.2(u)(1)(iv).

The applicant was granted temporary resident status on May 20, 1992. The 43-month eligibility period for filing for adjustment expired on December 20, 1995. The Application for Adjustment of Status from Temporary to Permanent Resident (Form I-698) was submitted on August 3, 1999. The director therefore denied the untimely I-698 application, and subsequently terminated the applicant's temporary resident status.

The record contains an application for a replacement temporary resident card or employment authorization card, filed on April 15, 1992. That was one month before the applicant was granted temporary residence, so she would have only been entitled to the employment authorization card, which was issued to applicants for temporary residence. It does not appear INS mailed a new card to the applicant. Nevertheless, the failure to issue that card did not impact on the ability of the applicant to apply for adjustment to permanent residence by December 20, 1995. It is also noted that there is no indication in the record that the applicant filed any other application during the relevant 1992-95 period.

The applicant's statements made on rebuttal and then on appeal have been considered. Notices of approval of temporary residence, and notices advising aliens of the deadline by which to apply for permanent residence, were sent to aliens' last *known* addresses. Furthermore, INS and private organizations widely publicized the need to apply for permanent residence within the 43-month period.

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). There is no waiver available, even for humanitarian reasons, of these requirements. As the applicant has not overcome the grounds for termination of status, the appeal must be dismissed.

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