



U.S. Citizenship
and Immigration
Services

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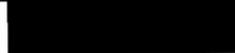
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FILE:



XHP 88 154 3097

Office: CALIFORNIA SERVICE CENTER

Date:

IN RE:

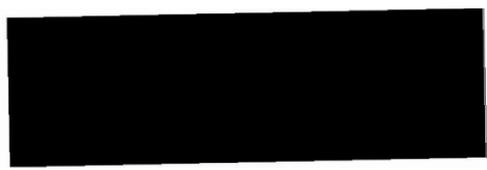
Applicant:



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 temporary resident status by the Director, California Service Center was appealed by the applicant. The director subsequently reopened the matter and denied the application for temporary residence. The matter is now before the Administrative Appeals Office (AAO) on appeal. The case will be remanded for further action and consideration.

The director initially terminated the applicant's temporary residence based upon the determination that the applicant's Form I-698, Application to Adjust Status from Temporary to Permanent Resident, had been denied and it was more than 43 months since he had been granted temporary residence.

On appeal, the applicant asserted that he appeared at the Los Angeles, California District Office of the Immigration and Naturalization Service or the Service (now Citizenship and Immigration Services or CIS) on many occasions since 1990 to make inquiries regarding the processing of his Form I-698 adjustment application. The applicant indicated that the Service erroneously denied the Form I-698 adjustment application and compounded this error by wrongfully terminating his temporary residence.

The director subsequently reopened the matter and determined that the applicant was inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (Act) because he had been convicted of a crime involving a controlled substance. However, rather than terminating the applicant's temporary residence the director denied the application for temporary resident status on November 15, 2004.

The record reflects that the applicant filed the Form I-687, Application for Status as a Temporary Resident, on April 12, 1988. The record shows that the applicant was granted temporary residence on August 17, 1988. Consequently, the notice of decision dated November 15, 2004 in which the director denied the application for temporary resident status must be considered to have been issued in error as the applicant did not have an application for temporary residence pending before CIS. If the applicant's temporary residence is to be properly terminated, the procedures for the termination of temporary resident status put forth at 8 C.F.R. § 245a.2(u) must be followed.

If new termination proceedings are instituted, a notice of intent to terminate must be issued to the applicant and counsel prior to entering a new decision. The new decision, if adverse, shall be certified to this office for review.

ORDER: The case is remanded for appropriate action and decision consistent with the foregoing.