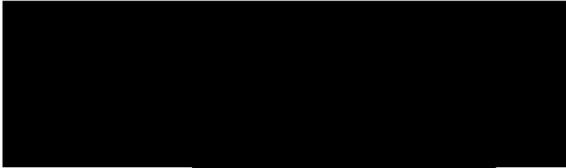


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U.S. Citizenship
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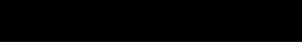
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FEB 22 2007

FILE:



Office: CALIFORNIA SERVICE CENTER

Date:

XLA 88 517 2079

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. 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 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 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 he failed to file his Form I-698, Application to Adjustment Status from Temporary to Permanent Resident, during the 43-month application period because he and his wife didn't have enough money to pay the application fees.

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 April 5, 1989. The 43-month eligibility period for filing for adjustment expired on November 4, 1992. The applicant's Form I-698 was not received by the Immigration and Naturalization Service, now Citizenship and Immigration Services, until March 2, 2001, more than eight years after the expiration of the 43-month application period. The director therefore denied the untimely I-698 application, and subsequently terminated the applicant's temporary resident status.

On appeal, the applicant states that he didn't file his adjustment application during the 43-month application period because he couldn't afford to pay the application fees.

The applicant's statements on appeal have been considered. Nevertheless, there is no waiver, even for humanitarian reasons, for failure to file the Form I-698 within the 43-month application period. As the applicant has not overcome the basis for termination of status, the appeal must be dismissed.

Beyond the decision of the director, the applicant's 2006 fingerprint results report reveals the following offenses:

1. On November 18, 1976, the applicant was arrested in Los Angeles, California, and charged with driving under the influence of alcohol in violation of section 23102(a) of the California Vehicle Code, a misdemeanor.
2. On June 9, 1977, the applicant was arrested in Norwalk, California, and charged with possession of a narcotic controlled substance.
3. On June 8, 2002, the applicant was arrested in Bell Gardens, California, and charged with one count of manufacturing a narcotic controlled substance and one

count of conspiracy to commit a crime. The record contains a court document from the Superior Court of California, County of Los Angeles, revealing that the applicant pled *nolo contendere* (no contest) to one count of possession of a narcotic controlled substance in violation of section 11377(a) of the California Health and Safety Code, a felony. (Case Number [REDACTED])

4. On September 9, 2002, the applicant was arrested in Norwalk, California, and charged with driving under the influence of alcohol or drugs.
5. On September 13, 2003, the applicant was arrested in Bell Gardens, California, and charged with possession of a narcotic controlled substance.

The record contains no information regarding court dispositions of the offenses detailed in Nos. 1, 2, 4, and 5 above. Nevertheless, the applicant is ineligible for temporary resident status because of his felony drug conviction detailed in No. 3 above. 8 C.F.R. § 245a.2(u)(1)(iii). There is no waiver for his ground of ineligibility. 8 C.F.R. § 245a.2(k)(3)(i). The applicant is also inadmissible to the United States because of his felony drug conviction. Section 212(a)(2)(A)(i)(II) of the Act. Therefore, the applicant's temporary resident status also must be terminated for these reasons.

The applicant is ineligible for temporary residence for the above stated reasons, with each considered as an independent and alternative basis for denial.

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