

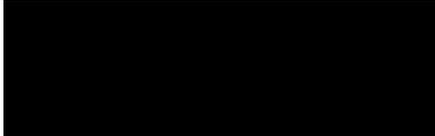
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U.S. Department of Homeland Security
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U.S. Citizenship
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FILE:



Office: Vermont Service Center

Date: **AUG 30 2005**

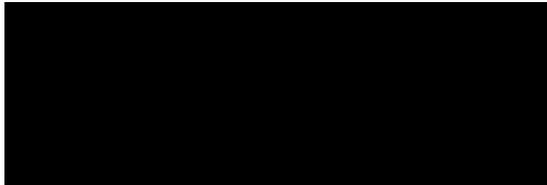
IN RE:

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, Director
Administrative Appeals Office

DISCUSSION: The termination of the applicant's temporary resident status by the Director, Vermont Service Center is before the Administrative Appeals Office on appeal. The appeal will be sustained.

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, counsel states the applicant was never notified of a decision on his application for temporary residence, and therefore did not know when the 43-month period began. Counsel points to the pertinent regulation that states the alien "shall be notified in writing of the decision."

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's original application for temporary residence was either lost or rejected by the government. Pursuant to his court case, *Filemon Gonzalez v. INS*, 89 Civ. 4748 (WK), the applicant filed a duplicate application for temporary residence at New York in 1993. He was promptly interviewed, and the application's action block shows the application was granted two weeks later, on July 26, 1993 apparently by the District Director, New York. The 43-month period from that date expired on February 26, 1997.

The record does not contain a file copy of an approval notice addressed to the applicant. More importantly, the computer database does not show that the application was granted. Temporary residence (legalization) applications were normally approved at service centers, not district offices, and when applications were granted at service centers, approval notices were automatically generated. Because the duplicate application here was predicated on a court order or settlement, it appears the processing of the application was done at the district office in an effort to expedite the matter. Because of that, the normal service center computer update of the approval did not take place, and there was no approval notice generated and mailed to the applicant. As the database still showed the application as pending rather than approved, the applicant continued to receive extensions of his employment authorization on an "employment authorization card" (which was valid for applicants) rather than on a "temporary resident card" which should have been issued to him. This meant that he had every reason to believe that his application was still pending, rather than approved.

Given this situation, the premise that the applicant was aware of the approval and can be held responsible for failing to file a timely application for adjustment cannot be supported.

ORDER: The appeal of the termination of temporary residence is sustained, and the termination is withdrawn. The Director, Vermont Service Center shall advise the applicant of the process for filing the adjustment application.