



U.S. Citizenship  
and Immigration  
Services

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

M1

[Redacted]

FILE: [Redacted]  
XLA-88-520-3051

Office: CALIFORNIA SERVICE CENTER

Date: MAY 01 2006

IN RE: Applicant: [Redacted]

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:

[Redacted]

ADDITIONAL INFORMATION

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.

2 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 on appeal. The appeal will be rejected.

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.

An adverse decision regarding temporary resident status may be appealed to the Administrative Appeals Office. Any appeal with the required fee shall be filed with the Service Center within thirty (30) days after service of the notice of termination. An appeal received after the thirty-day period has tolled will not be accepted. *See* 8 C.F.R. § 245a.2(p). Whenever a person has the right or is required to do some act within a prescribed period after the service of notice upon him and the notice is served by mail, three days shall be added to the prescribed period. Service by mail is complete upon mailing. 8 C.F.R. § 103.5a(b).

The director issued the notice of termination on September 2, 1999, and mailed it to the applicant's address of record. The appeal was received on January 6, 2005. Therefore, the appeal was untimely filed, and must be rejected.

Even if the appeal had been timely filed, the applicant's temporary resident status would remain terminated. The director's decision was correct. 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 28, 1992. The 43-month eligibility period for filing for adjustment expired on November 28, 1995. The applicant never filed an Application for Adjustment of Status from Temporary to Permanent Resident (Form I-698). Accordingly, even if the appeal had been timely filed, the appeal would have been dismissed based on this finding.

**ORDER:** The appeal is rejected.