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U.S. Department of Homeland Security
20 Mass Ave. N.W., Rm. 3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

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FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: DEC 27 2004

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: 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, 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 he was not aware of the 43-month deadline. He asserts that his file was lost. He points out numerous humanitarian factors, and requests oral argument in Phoenix, Arizona regarding this appeal.

With regard to the applicant's request for oral argument, such a request must set forth specific facts explaining why such argument is necessary to supplement the appeal. 8 C.F.R. 103.3(b). Oral argument, which is conducted only at this office in Washington, D.C., will be denied in any case where the appeal is found to be frivolous, where oral argument will serve no useful purpose or where written material or representations will appropriately serve the interests of the applicant. The applicant's request does not set forth an explanation of why oral argument is necessary; nor does it establish that the material submitted will not appropriately serve the interests of the applicant. Accordingly, the request for oral argument is denied.

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 June 21, 1989. He was sent a notice to this effect. The 43-month eligibility period for filing for adjustment expired on January 21, 1993. The Application for Adjustment of Status from Temporary to Permanent Resident (Form I-698) was filed on May 26, 1995. The director therefore denied the untimely I-698 application, and subsequently terminated the applicant's temporary resident status.

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).

The applicant indicates that he was not aware of the 43-month requirement. The Immigration and Naturalization Service and private voluntary organizations did widely publicize the requirement of applying for adjustment to permanent residence within the requisite period. Further, the applicant's wife and children applied for temporary residence (legalization), and he has said that some of them are now permanent resident aliens. Therefore, it appears that they did acquire permanent residence through the legalization program, and were aware of the 43-month requirement.

It does not appear that the applicant's file was lost. All indications are it was at the Western Service Center (now California Service Center) during the requisite 43-month period. At one point after that the applicant departed the United States, and upon return his inspection was deferred to the Phoenix office. That office has confirmed that, unfortunately, the applicant's passport and original temporary resident card were lost. However, this took place in 1996, and does not relate to the issue of failing to apply for permanent residence by January 21, 1993.

The applicant's statements made on appeal have been considered. Nevertheless, there is no waiver available, even for humanitarian reasons, of the requirements stated above. 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.