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Washington, DC 20529

U.S. Citizenship and Immigration Services

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[redacted]

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 an application for adjustment of status from temporary to permanent residence within the 43-month application period.

On appeal, the applicant states that he had to change address several times, and could only receive notification regarding his case when it was too late to respond. He asserts that, when he did appear at local offices of the Immigration and Naturalization Service (the Service), he was improperly told that his case was still in progress and that he should wait for a 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. 8 C.F.R. § 245a.2(u)(1)(iv).

The applicant was granted temporary resident status on May 18, 1989. The 43-month eligibility period for filing for adjustment expired on December 18, 1992. The applicant did not file the adjustment application until November 30, 1999, and the director therefore terminated the applicant's temporary resident status.

The Service sent approval notices regarding temporary residence, and warning notices advising aliens of the need to apply for permanent residence, to aliens' last known addresses. The applicant points out that he moved several times, and may have missed mail that had been sent to him. It is incumbent upon an alien to keep the Service advised of his address. Nevertheless, the Service and private voluntary organizations widely publicized the requirement of applying for adjustment to permanent residence within the requisite period

The applicant claims that he did not apply for adjustment in a timely fashion because he had not been properly advised of the need to do so. While the applicant asserts that Service personnel improperly told him to wait until he received further word before applying, what may or may not have transpired between the applicant and Service personnel can be neither confirmed nor rebutted from the record.

It is noted that 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'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.