U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: JUN 3 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:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the service center that processed 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 temporary resident status by the Director, Texas Service Center, is now 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, counsel claims that the applicant timely filed the adjustment application on or about October 20, 1991, but that no response was ever received from the Immigration and Naturalization Service, or the Service (now Citizenship and Immigration Services, or CIS). Counsel submits documentation in support of the appeal.

The status of an alien lawfully admitted for temporary residence under section 245A(a)(1) of the Immigration and Nationality Act (INA) 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. 8 C.F.R. § 245a.2(u)(1)(iv).

The applicant was granted temporary resident status on October 31, 1988. The 43-month eligibility period for filing for adjustment expired on May 31, 1992. The Application for Adjustment of Status from Temporary to Permanent Resident (Form I-698) was filed on December 10, 1992. The director therefore denied the untimely I-698 application, and subsequently terminated the applicant's temporary resident status.

Counsel contends that the applicant initially submitted his Form I-698 adjustment application and a money order on or about October 20, 1991. While counsel did submit a photocopied Form I-698 that is signed by the applicant and dated October 20, 1991, both the administrative and electronic record do not contain any indication that a From I-698 adjustment application was received from the applicant prior to December 10, 1992. Furthermore, counsel has not provided any independent evidence, such as a postal receipt or money order receipt, which would tend to establish that the Form I-698 adjustment application was submitted in a timely fashion.

The Service and private voluntary organizations widely publicized the procedures of the amnesty program, including the necessity of applying for permanent residence. If the applicant required assistance in pursuing his application, such assistance was widely available with inquiries to the Bureau, from private nonprofit Qualified Designated Entities, and from private legal assistance resources. Furthermore, the original eligibility period of 31 months was extended to 43 months to better enable applicants to file timely applications. The burden to duly file the I-698 application in a timely manner remains with the applicant. 8 C.F.R. § 245a.3(d).

The statements 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.