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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042.
Washington, DC 20529

U.S. Citizenship
and Immigration
Services

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: SEP 0 8 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 does not specifically contest the basis of termination. He provides his new address, and refers to having received papers for permanent residence in 2001.

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 May 4, 1989. Immigration and Naturalization Service computer records show a notice of intent to terminate was issued four days later, and that the application for temporary residence was again granted on May 7, 1992. There are no actual documents or notices in the record which would suggest that termination proceedings were initiated and that the applicant was again granted temporary residence; the computer updates may have been erroneous. The approval of temporary residence on May 4, 1989 appears to be the only action taken.

Calculating from May 4, 1989, the 43-month eligibility period for filing for adjustment expired on December 4, 1992. Even if we were to calculate from the later approval date of May 7, 1992, the 43-month period would have expired on December 7, 1995. The Application for Adjustment of Status from Temporary to Permanent Resident (Form I-698) was filed on October 12, 1999. The director therefore denied the untimely I-698 application, and subsequently terminated the applicant's temporary resident status.

The Immigration and Naturalization Service and private voluntary organizations widely publicized the requirement of applying for adjustment to permanent residence within the requisite period. Furthermore, 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).

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.