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U.S. Department of Homeland Security
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Washington, DC 20529

**PUBLIC COPY**

U.S. Citizenship and Immigration Services

[redacted]

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FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: JAN 03 2005

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.

Ellen C. Johnson

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 applicant appears to be represented; however, no Form G-28, Notice of Entry of Appearance of Attorney or Representative, had been submitted in this matter. Therefore, this decision will be sent to the applicant only.

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's son indicates that the applicant's family did not see to it that the application was timely filed. He indicates that any of the applicant's U.S. citizen children is willing to file a petition on her behalf.

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 April 7, 1989. The 43-month eligibility period for filing for adjustment expired on November 7, 1992. The Application for Adjustment of Status from Temporary to Permanent Resident (Form I-698) was filed on December 14, 1999. 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 learn English and civics, and 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. Any of her U.S. citizen children who is at least 21 years of age may file the Petition for Alien Relative on her behalf.

**ORDER:** The appeal is dismissed. This decision constitutes a final notice of ineligibility.