



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

Office: Nebraska Service Center

Date: **JAN 17 2006**

IN RE:

Applicant:

[REDACTED]

APPLICATION: Application for Temporary Resident Status under 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. 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 temporary resident status by the Director, Nebraska Service Center is before the Administrative Appeals Office on appeal. The matter will be remanded for further consideration and action.

The director terminated the applicant's status because of the applicant's record of three misdemeanor convictions, and because the applicant had been deported.

On appeal, counsel states that the termination of **temporary** resident status was improper, as the applicant had already been granted the status of a **permanent** resident.

The temporary resident status of an alien who has been convicted of a felony or three or more misdemeanors in the United States may be terminated at any time. 8 C.F.R. § 245a.2(u)(1)(iii). A determination must be made as to whether the applicant was in temporary resident status at the time the director issued the notice of termination of temporary resident status. If his status had already been adjusted to that of a lawful permanent resident, the termination of temporary residence was improper and moot.

The applicant was granted temporary resident status on August 11, 1992. His application for adjustment to permanent resident status was received on February 3, 1993.

Counsel points out that the applicant's passport was later stamped "Temporary Evidence of Lawful Admission for Permanent Residence" by the Denver office of the Immigration and Naturalization Service (INS, now Citizenship and Immigration Services, or CIS). Furthermore, apparently on September 6, 1997, the Denver office issued the applicant Form I-94, Arrival/Departure Document, bearing the same stamp. An approval worksheet dated October 23, 1998 seemingly indicates the Denver office granted permanent residence, as does another card used for capturing data for the preparation of Form I-551, Alien Registration Card, which is issued only to permanent residents. It is noted that the notice of termination of temporary resident status was not issued until May 19, 2005.

Conversely, there are numerous indications in the record that the application for adjustment to permanent resident status was never granted. There is no evidence that the applicant met the English language and civics requirements necessary for adjustment to permanent residence. There is no Form I-181, Creation of Record of Lawful Permanent Residence, which is the official record of approval of adjustment. Nor is there a file copy of an approval notice that would have been sent to the applicant. A note dated December 16, 1998 from an officer at the Nebraska Service Center explains that the adjudicative officer at Denver stated that the approval stamp for permanent residence had been used in error. Furthermore, the purported approval in October 1998 took place *after* the aforementioned stamp signifying permanent residence was used.

The many blatant contradictions in the record must be addressed by the directors that had jurisdiction over the application for permanent residence. Only then can an appellate review of the termination of temporary residence be made. The District Director, Denver and the Director, Nebraska Service Center shall enter explanatory memoranda into the record as to what transpired, and whether the applicant was granted permanent residence by that office. Whatever each director's determination is, he or she shall explain why

that is the case in spite of the contradictory indications. If it is determined by either director that he or she granted lawful permanent residence to the applicant, no further action need be taken on this termination of temporary resident status, and the matter may be declared moot.

ORDER: The matter is remanded to the Director, Nebraska Service Center, and then to the District Director, Denver, for further consideration and action.