

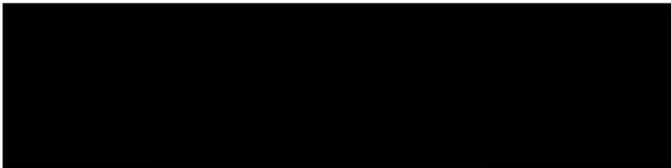
**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**



U.S. Citizenship
and Immigration
Services

L1

PUBLIC COPY



FILE: [Redacted]
XRE 88 139 0003

Office: CALIFORNIA SERVICE CENTER

Date: **SEP 27 2006**

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. The file has 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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The termination of temporary resident status by the Director, California 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 Form I-698, Application for Adjustment of Status from Temporary to Permanent Resident, within the 43-month application period.

On appeal, the applicant indicates that he previously filed the adjustment application when he appeared for an interview, had pictures taken, provided fingerprints, and paid a fee with a money order at the Immigration and Naturalization Service or the Service (now Citizenship and Immigration Services, or CIS) office located in Stockton, California at some time between 1990 to 1992. The applicant also claims that he never received the notice of intent to terminate issued by the Service on May 2, 2001.

The status of an alien lawfully admitted for temporary residence under section 245A(a)(1) of the Immigration and Nationality Act (Act), 8 U.S.C. § 1255a(a)(1), 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 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 August 22, 1988. The 43-month eligibility period for filing for adjustment expired on March 22, 1992. A review of the record reveals that as of the date of this decision, the applicant has not filed the Form I-698 adjustment application. The director therefore terminated the applicant's temporary resident status because the applicant had failed to file a Form I-698 adjustment application within the 43-month application period.

On appeal, the applicant claims that he never received the notice of intent to terminate issued by the Service. However, the record shows that the Service mailed the notice of intent to terminate to the applicant at his address of record on May 2, 2001. The record further shows that the notice was returned by the United States Postal Service marked as "attempted unknown" with the handwritten notation "not at this address." A review of the electronic record reveals that applicant failed to inform the Service or its successor CIS of any change in his address of record prior to September 24, 2003. Therefore, the applicant's failure to receive this notice must be considered to be of his own making.

The applicant indicates that he previously filed a timely adjustment application when he appeared for an interview, had pictures taken, provided fingerprints, and paid a fee with a money order at the Service office located in Stockton, California in the period from 1990 to 1992. However, the applicant has not furnished any evidence such as a filing receipt or a money order receipt to corroborate his claim that he timely filed the Form I-698 adjustment application in the period from 1990 to 1992. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998)(citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Moreover, there is no indication in either the administrative record or electronic record that the applicant ever filed a Form I-698 adjustment application with the Service or its successor CIS. Accordingly, the assertion made on appeal that a Form I-698 adjustment application was timely filed is not persuasive. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

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 Service, 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 Form I-698 adjustment 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.