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U.S. Citizenship
and Immigration
Services

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FILE:

[REDACTED]
SRC 05 229 50837

Office: TEXAS SERVICE CENTER

Date:

APR 12 2001

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:

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, Chief
Administrative Appeals Office

DISCUSSION: The termination of the applicant's temporary resident status by the Director, Texas Service Center, is 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 asserts that the applicant filed an untimely permanent residence application because he was a minor at the time he was approved for temporary resident status and was unaware of the need to file any further paperwork.

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 October 26, 1988. The 43-month eligibility period for filing for adjustment expired on May 26, 1992.¹ Citizenship and Immigration Services (CIS) has no record of the applicant filing the Application for Adjustment of Status from Temporary to Permanent Resident (Form I-698).

On appeal, counsel asserts that neither CIS nor the applicant's father informed him of the need to file an adjustment application. Counsel explains that the applicant had not reached the age of majority at the time he was approved for temporary resident status and therefore was unaware of the additional need to file an adjustment application. She further claims that the applicant finally approached CIS for information on his status in 2000. While the AAO acknowledges the factors that may have prevented the applicant from following through with the filing of an adjustment application, there is no statute or regulation that allows either CIS or the AAO the discretion to take the applicant's particular circumstances into consideration. Despite counsel's suggestion that the applicant's failure to file the necessary paperwork is partly attributed to CIS, it is generally known that CIS and private voluntary organizations widely publicized the requirement of applying for adjustment to permanent residence within the requisite period. Furthermore, CIS did send notices to aliens' last known addresses, specifically advising them of the requirement.

It is further noted that 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).

The applicant's statements made on appeal have been considered. However, there is no indication that the applicant was improperly advised by CIS. As the applicant has not overcome the basis for termination of status, the appeal must be dismissed.

¹ The director's decision erroneously indicates that the deadline for filing a timely adjustment application ended on May 26, 1991. This is only 31 months from the date the application for temporary residence was granted. As the deadline for filing an adjustment application was 43 months from the date of obtaining temporary residence, the applicant's deadline would have been one year later than the date suggested by the director. As the director's error has no bearing on the applicant's otherwise untimely filing of the adjustment application, no further action will be taken at this time.

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