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U.S. Citizenship
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Services

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APR 20 2007

FILE:

XVN 88 518 1140

Office: NEBRASKA SERVICE CENTER

Date:

IN RE:

Applicant:

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, Nebraska 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 claims that the applicant filed a timely Form I-698, but has no receipt or other proof of filing. Counsel states that the applicant has continued receiving extensions of his temporary resident status until 1996.

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 February 10, 1989. The 43-month eligibility period for filing for adjustment expired on September 10, 1992. Despite counsel's claim that the applicant filed two adjustment applications, the first of which was purportedly filed within the prescribed 43-month period, the record shows that the Application for Adjustment of Status from Temporary to Permanent Resident (Form I-698) was first received by Citizenship and Immigration Services (CIS) on August 16, 2004. The director therefore denied the untimely I-698 application, and subsequently terminated the applicant's temporary resident status.

The applicant has provided no evidence to support the claim that he filed adjustment applications on two separate occasions. 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)). Counsel explains this lack of evidence by stating that no receipts were provided for either filing. While counsel claims that a copy of a money order is being submitted as proof of the second filing, which he states took place on February 8, 2000, the attached submissions do not include a copy of that money order. Regardless, a February 2000 filing would have been seven years and five months past the filing deadline and would still have been considered untimely.

It is 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, the applicant has provided no evidence to corroborate the claim that a timely Form I-698 was filed. As the applicant has not overcome the basis for termination of status, the appeal must be dismissed.

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