



U.S. Citizenship
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Services

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FILE: [REDACTED]
XDA 88 002 2021

Office: TEXAS SERVICE CENTER

Date: APR 25 2007

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.

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, the applicant asserts that he filed a timely Form I-698, Application to Adjust Status from Temporary to Permanent Resident, with the Immigration and Naturalization Service (the Service), now Citizenship and Immigration Services (CIS), in September 1990.

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 17, 1989. The 43-month eligibility period for filing for adjustment expired on September 17, 1992. The applicant's Form I-698 was not properly filed with the correct fee until January 31, 2000. The director therefore denied the application and terminated the applicant's temporary resident status.

On appeal, the applicant asserts that he did file a Form I-698 within the 43-month application period. He has previously submitted the following relevant documents:

- a photocopy of a Service notice dated August 2, 1992, informing the applicant that the application period for applying for adjustment of status from temporary to permanent resident had been extended from 31 to 43 month;
- a photocopy of a letter from the applicant to the Texas Service Center dated February 15, 1993, stating that he was enclosing a Form I-698 and a money order in the amount of \$40.00, along with a photocopy of the Form I-698 and money order in the amount of \$80 he had mailed to the Service on September 11, 1990;
- a photocopy of a Form I-698 apparently signed by the applicant on September 11, 1990, a photocopy of an American Express Money Order dated September 11, 1990 that was payable to the Service in the amount of \$80.00, and a photocopy of a certificate of satisfactory pursuit from the Dallas Independent School District dated March 28, 1989;
- a photocopy of a Form I-698 apparently signed by the applicant on February 15, 1993, along with a photocopy of a United States Postal Service (USPS) domestic return receipt reflecting receipt of mail by the Service on February 18, 1993, a photocopy of an American Express money order dated February 15, 1993, payable

to the Service in the amount of \$40.00, and a Certificate of Satisfactory Pursuit from the Dallas Independent School District dated February 26, 1992;

- a photocopy of a notice dated March 2, 1993 from the Southern Service Center, now the Texas Service Center, rejecting the applicant's Form I-698 because he had not enclosed the correct fee of \$80.00;
- a photocopy of a Form I-698 apparently signed by the applicant on March 4, 1994; and,
- a photocopy of a Form I-698 apparently signed by the applicant on January 15, 1998 and a photocopy of a USPS domestic return receipt indicating receipt of mail at the Texas Service Center on January [illegible]0, 1998.

On September 16, 2005, the applicant was requested to provide evidence to establish that the Forms I-698 he claims to have filed with the Service in 1993, 1994, 1998, and 2000 were properly filed with the full and correct fee. Specifically, the applicant was requested to provide the front and back of the American Express money orders dated September 1, 1990, February 15, 1993, and January 27, 2000, with endorsements on the reverse side indicating that the money orders had been cashed by the Service. The applicant was informed that he could also submit a photocopy of a Service notice acknowledging receipt of the Forms I-698 filed in 1990 or 1993. The applicant, in response, submitted copies of the evidence previously submitted and a letter dated October 4, 2005, from First Data in Englewood, Colorado, stating that the company was unable to provide a photocopy of the reverse side of his American Express money orders dated September 11, 1990 and February 15, 1993 because of the age of the items.

Although it appears that the applicant may have previously attempted to file Forms I-698 in 1990 and 1993, he has not submitted sufficient evidence to establish that these applications were properly filed with the full and correct fee during the 43-month application period. Even if the applicant had properly filed a Form I-698 on or around February 15, 1993, it would have been untimely filed since the 43-month application period expired on September 17, 1992.

The applicant's statements on appeal have been considered. Nevertheless, there is no waiver, even for humanitarian reasons, for failure to file the Form I-698 within the 43-month application period. As the applicant has not overcome the basis for termination of status, the appeal must be dismissed.

The applicant is ineligible for temporary residence for the above stated reasons, with each considered as an independent and alternative basis for denial.

It is noted that the applicant pled guilty on May 11, 1984, in the County Court of Denton County, Texas, to driving while intoxicated. The applicant was sentenced to 90 days confinement in the Denton County Jail, with imposition of sentence suspended. The court placed the applicant on probation for a period of 24 months and ordered him to pay \$250.00 in fines and court costs.

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