U.S. Department of Homeland Security
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U.S. Citizenship
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FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date:

XHO 87 098 5066

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:

[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, Chief
Administrative Appeals Office

DISCUSSION: The termination of the applicant's temporary resident status by the Director, California 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. Section 245A(b)(2)(C) of the Immigration and Nationality Act (Act), 8 U.S.C. § 1255a(b)(2)(C). The director also determined that the applicant is excludable under section 212(a)(2)(A)(i)(II) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(II).

On appeal, counsel disputes the director's conclusions. With regard to the applicant's late filing of his application to adjust status to that of a permanent resident, counsel blames Citizenship and Immigration Services (CIS) for its alleged failure to properly inform the applicant of the filing deadline.

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 1, 1989. The 43-month eligibility period for filing for adjustment expired on August 31, 1992. The record shows that the Application for Adjustment of Status from Temporary to Permanent Resident (Form I-698) was first received by CIS on October 22, 2001. The director therefore denied the untimely I-698 application, and subsequently terminated the applicant's temporary resident status.

On appeal, counsel acknowledges the applicant's failure to apply for adjustment in a timely fashion, but asserts that the untimely filing was the result of CIS's failure to properly advise the applicant of the time limitations and the need to file the adjustment application within the statutory guidelines. In a prior response to the director's notice of intent to terminate, counsel stated that the applicant was misinformed by service officers who purportedly suggested that he file a Form I-485 to adjust his status to that of permanent resident under the provisions of the Legal Immigration Family Equity (LIFE) Act and further asserted that CIS never issued a decision regarding the untimely Form I-698. However, contrary to counsel's latter assertion, the record contains a copy of the director's decision, dated March 8, 2004, denying the applicant's Form I-698 application. The notice was issued on the same date and was sent to the same address as the notice of intent to terminate, which the applicant received.

Further, with regard to counsel's assertion that the applicant never received proper filing instructions, the director properly stated that the record contains no evidence of correspondence showing that the applicant inquired about the status of his case from service officers or that he was improperly informed by CIS employees as a result of such inquiry. That being said, there is no legal basis for counsel's assertion that CIS is under a legal obligation to inform every temporary resident of the need to file for an adjustment of status to that of a permanent resident. While the AAO appreciates the applicant's situation of having been unfamiliar with the U.S. immigration laws and the English language, he was not the only applicant with those particular hardships. Moreover, CIS recognized these common hardships and, therefore, made every effort to inform temporary residents of the statutory time limitations to file adjustment applications.

Counsel also acknowledges CIS's attempt to afford applicants a reasonable amount of time in which to file their respective applications to adjust to permanent resident status by extending the original eligibility period from 31 months to 43 months. However, the burden to file the adjustment application in a timely manner

remains with the applicant. *See* 8 C.F.R. § 245a.3(d). Furthermore, counsel attempts to liken the situation of a temporary resident attempting to adjust his/her status to that of a permanent resident to applicants for temporary resident status who were denied the opportunity to submit their applications for temporary residence when they were "front desked." Counsel argues that the applicant was misinformed about the time limitation for filing a Form I-698 and therefore, was effectively denied the opportunity to file the adjustment application. However, unlike temporary resident applicants who were "front desked" and, therefore, altogether denied the opportunity to submit their applications for temporary resident status, the applicant was not denied the opportunity to file a Form I-698 and, in fact, could have obtained the necessary information regarding the filing deadline through sources other than CIS itself. Thus, counsel's argument is without merit. The applicant has not overcome the basis for the director's finding of ineligibility.

Additionally, the director concluded that the applicant is ineligible for temporary residence because he admitted to having purchased cocaine, a crime involving a controlled substance.

An alien is inadmissible if he has been convicted of, or admits having committed, or admits committing acts which constitute the essential elements of a violation of (or a conspiracy to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 USC 802). Section 212(a)(2)(A)(i)(II) of the Act, formerly section 212(a)(23) of the Act.

Despite the fact that the applicant's drug charge was dismissed after diversion, the director found the applicant to be inadmissible under section 212(a)(2)(A)(i)(II) of the Act based on his admission to having committed a crime involving a controlled substance.

On appeal, counsel asserts that current provisions of the Act cannot be applied to a 1988 admission, which was not considered a ground for exclusion at the time it took place. Counsel's argument, however, is directly contradicted by case law precedent, which determines that issues of present admissibility are determined under the law that exists on the date of the decision. *Matter of Alarcon*, 20 I&N Dec. 557 (BIA 1992). Pursuant to 8 C.F.R. § 103.3(c), precedent decisions are binding on all CIS offices.

Nevertheless, the director's conclusion that the applicant's statement dated October 15, 2004 amounts to an admission of a crime involving a controlled substances is incorrect. While the applicant acknowledges having accepted "a small plastic bag" and "some white crumbs," his statement does not establish that he knew at the time of the acceptance that he was in the possession of a controlled substance. Moreover, *Matter of K*, 7 I&N 594, 598 (BIA 1957) specifically outlines the following three requirements for accepting an admission as a ground of inadmissibility: 1) the admitted conduct must constitute the essential elements of the crime; 2) the applicant must have been provided with a definition of the essential elements of the offense prior to his admission; and 3) the admission must be voluntary. In the present matter, these requirements were not met. Therefore, the director's determination that the applicant is inadmissible based on his admission is hereby withdrawn.

Regardless, as the applicant failed to file a timely application for adjustment of status to that of a permanent resident, he has not overcome the basis for termination of status. Therefore, the appeal must be dismissed.

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