



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED]
XEL 88 016 4053

Office: NEBRASKA SERVICE CENTER

Date: FEB 12 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:

[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, 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 for the applicant states that the applicant was a minor during the 43-month application period and was not legally able to file the Form I-698 on her own behalf.

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 May 2, 1988.¹ The 43-month eligibility period for filing for adjustment expired on December 2, 1991. The applicant's Form I-698, Application to Adjust Status from Temporary to Permanent Resident, was not received by Citizenship and Immigration Services (CIS), formerly the Immigration and Naturalization Service (INS), until April 9, 2004, almost 13 years after the expiration of the 43-month application period. The district director therefore denied the application and terminated the applicant's temporary resident status.

On appeal, counsel for the applicant states that the applicant was a minor during the 43-month application period and relied on her parents to file the Form I-698 on her behalf. Counsel further states that the applicant reported all address changes to INS and should have received any notices that were mailed to her reminding her of the requirement that the adjustment application be filed within the 43-month application period.

The record contains INS notices dated September 17, 1990 and March 10, 1991, reminding the applicant of the requirement that the Form I-698 be filed prior to the expiration of the 43-month application period. The notices were both mailed to the applicant at her address of record, [REDACTED], [REDACTED], but were returned to INS as undeliverable mail. There is no indication in the record that the applicant reported any address changes to INS prior to the filing of her adjustment application on April 9, 2004.

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

¹ It is noted that the director incorrectly stated in the notice of intent to terminate and the notice of termination that the applicant was granted temporary resident status on May 5, 1990. The applicant was granted temporary resident status on May 2, 1988, and the action was entered into INS computer records on May 5, 1990.

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.

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