



U.S. Citizenship
and Immigration
Services

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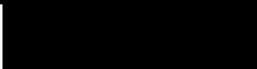
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FEB 12 2007

FILE:



Office: CALIFORNIA SERVICE CENTER

Date:

XEM 88 013 7123

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:

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 Director, California Service Center, terminated the applicant's temporary resident status. He subsequently reopened the case and affirmed his prior decision to terminate the applicant's temporary resident status. The case is now is before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reveals that the applicant was granted temporary resident status on April 27, 1989. On August 27, 1990, the applicant filed her Application to Adjust Status from Temporary to Permanent Resident (Form I-698). The applicant indicated on the form at Item #17 that she was currently receiving aid for dependent children (AFDC).

On October 5, 1990, the applicant was requested to submit additional evidence in support of her adjustment application. The applicant, in response, submitted a certificate of satisfactory pursuit and a letter dated November 5, 1990, from the [REDACTED] Eligibility Worker, Department of Public Social Services, Bureau of Assistance Payments, Pasadena, California, stating that the applicant had been receiving financial aid for her four children since December 1, 1981. [REDACTED] further stated that the applicant qualified for financial aid because she was divorced and was unable to get any money from her ex-husband to help support her children.

On April 5, 1993, the director notified the applicant of his intent to terminate her temporary resident status because the record did not contain sufficient evidence to establish her eligibility for that status. The director provided the applicant with an opportunity to submit additional evidence to establish her residence in the United States from January 1, 1982 through May 4, 1988; a completed Form I-693, Medical Examination Form; and documentation from every social service agency from which she was receiving financial aid explaining the kind of aid she was receiving, the amount of aid received, the names of her children who received public assistance, and the length of time she had received that assistance; and a completed Form I-134, Affidavit of Support executed by spouse, parents, or any other responsible party, or any other evidence to establish that she was employed or self-supporting. The applicant was granted 30 days to respond to the notice. The notice was mailed to the applicant's most current address, but was returned to the Western Service Center as unclaimed mail.

On September 24, 1993, the director terminated the applicant's temporary resident status because she failed to establish continuous residence in the United States from prior to January 1, 1982 to May 4, 1988.

On October 27, 1993, the applicant filed an appeal from the denial decision. On appeal, the applicant stated that she received the Notice of Termination. The applicant submitted evidence to establish her continuous residence in the United States during the qualifying period.

On September 7, 2000, the Chief of the Legalization Appeals Unit (now Administrative Appeals Office) determined that the applicant had submitted sufficient evidence to establish her continuous residence in the United States during the requisite period and had, therefore, overcome the sole ground for termination specified in the Notice of Termination. The Chief of the LAU noted that the Notice of Intent to Terminate, which the applicant did not receive, had also requested a completed Form I-693 medical examination form and evidence to establish that she was not likely

to become a public charge. The Chief of the LAU remanded the case instructing the director to provide the applicant with another opportunity to submit the required documentation.

On October 21, 2004, the service center director reopened the case and requested that the applicant provide a completed Form I-693, evidence to show that she was employed or self-supporting, and a Form I-690, Application for Waiver of Grounds of Excludability. The director granted the applicant 30 days to respond to the notice. The notice was mailed to the applicant's current address, [REDACTED] but was returned to the California Service Center as unclaimed mail.

On January 7, 2005, the director mailed a second Motion to Reopen and Notice of Intent to Deny to the applicant requesting that she submit a completed Form I-693 and evidence to establish that she is employed or self-supporting. This notice was mailed to the same address as the notice dated October 21, 2004, but it too was returned to the California Service Center as unclaimed mail.

The director, therefore, affirmed his prior decision terminating the applicant's temporary resident status on February 24, 2005, because the applicant failed to assist Citizenship and Immigration Services (CIS) in establishing her eligibility for temporary resident status.¹ The director informed the applicant that her appeal was still in effect and granted her 30 days to submit the required documentation to establish her eligibility for temporary resident status. This notice was mailed to the same address as the two prior notices, but it too was returned to the California Service Center as unclaimed mail. To date, the California Service Center has not received any further correspondence from the applicant relating to the termination of her temporary resident status.

An applicant for temporary resident status must establish entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status since such date and through the date the application is filed. Section 245A(a)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1255a(a)(2).

An applicant for temporary resident status under section 245A of the Act has the burden to establish by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, is admissible to the United States and is otherwise eligible for adjustment of status under this section. 8 C.F.R. § 245a.2(d)(5).

An applicant for temporary resident status must present documents establishing proof of identity, proof of residence, and proof of *financial responsibility*, as well as photographs, a completed Fingerprint Card (Form FD-258), and a fully completed Medical Examination for Aliens Seeking Adjustment of Status (Form I-693). (emphasis added) 8 C.F.R. § 245a.2(d).

¹ It is noted that the director incorrectly stated that his decision was a denial of the applicant's Form I-687, Application for Temporary Resident Status, rather than a termination of the applicant's temporary resident status. Nevertheless, as the director correctly explained the basis for termination of the applicant's temporary resident status, this minor error is not prejudicial to the applicant and in no way affects the outcome of this decision.

The first issue in this proceeding is whether the applicant has submitted a complete application including a completed Form I-693 medical examination form.

As previously stated, the applicant has been requested on four separate occasions to submit a completed Form I-693 and has failed to do so. Consequently it cannot be concluded that the applicant has submitted a complete application as required under 8 C.F.R. § 245a.2(d). The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis.

The second issue in this proceeding is whether the applicant has provided proof of financial responsibility to establish that she is not likely to become a public charge.

The applicant did not list any employment history at Item #36, "Employment in the United States Since First Entry," on her Form I-687. During her legalization interview, the applicant told the interviewing officer that she had been receiving public assistance including welfare, aid for dependent children, and medical benefits, since 1981. She claimed that she had worked as a sewing machine operator but was not able to provide proof of that employment because she was always paid in cash and her former employers would not give her employment letters. She explained that she was divorced and had no one to help support her children.

The applicant subsequently indicated on her Form I-698 that she was receiving AFDC. She provided a letter from the California Department of Public Social Services, Bureau of Assistance Payments, stating that the applicant had received financial aid for her four children, [REDACTED] and [REDACTED] since December 1, 1981.

On four separate occasions, the applicant has been requested to provide proof of financial responsibility in the form of an affidavit of support or evidence to establish that she is employed or self-supporting, but she has failed to provide proof of financial responsibility.

It cannot be concluded that the applicant has established financial responsibility. Therefore, the applicant's temporary resident status also must be terminated for this reason. It is noted that, in the notice of intent to deny, the director explained that the applicant could file a Form I-690 waiver application concerning the public charge inadmissibility. A Form I-690 waiver application was enclosed with both requests for additional evidence, but the applicant has failed to file a waiver application.

An alien applying for adjustment of status has the burden of proving by a preponderance of evidence that he or she has continuously resided in an unlawful status in the United States from prior to January 1, 1982 through the date of filing, is admissible to the United States under the provisions of section 245A of the Act, 8 U.S.C. § 1255a, and is otherwise eligible for adjustment of status. 8 C.F.R. § 245a.2(d)(5).

Due to her failure to demonstrate financial responsibility and her failure to provide a Form I-193 medical examination form, the applicant has not established eligibility for temporary resident status.

Consequently, the director's decision to terminate the applicant's temporary resident status will be affirmed.

It is noted that the applicant is the beneficiary of an approved Form I-130 immigrant visa petition filed on her behalf by her daughter, [REDACTED] a United States citizen.

It is further noted that the applicant's 2005 fingerprint results report revealed the following offenses:

1. On March 28, 1997, the applicant was arrested in Santa Barbara, California, and charged with burglary. The fingerprint results report indicates that she was convicted in the Municipal Court of Santa Maria, California, on the charge of petty theft in violation of section 484(a) of the California Penal Code, a misdemeanor.
2. On May 13, 1997, the applicant was arrested in Santa Barbara, California, and charged with theft of personal property, a misdemeanor, and attempt to commit a crime, also a misdemeanor.
3. On January 26, 2003, the applicant was arrested in Riverside, California, and charged with driving under the influence of alcohol.
4. On April 18, 2004, the applicant was arrested in Riverside, California, and charged with driving under the influence of alcohol and driving under the influence of alcohol with a blood alcohol content of 0.08% or greater.
5. On June 21, 2005, the applicant was arrested in Riverside, California, and charged with driving under the influence of alcohol.

These offenses must be addressed in any further proceeding before Citizenship and Immigration Services.

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