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**U.S. Citizenship
and Immigration
Services**

LL

FILE:

XSF 88 513 6004

Office: CALIFORNIA SERVICE CENTER

Date: JUN 13 2007

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 most recent 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.

On April 4, 2005, the director terminated the applicant's temporary resident status because the applicant's Form I-698, application for permanent resident status, had been denied.²

Temporary residence shall be terminated at the end of the 43rd month beginning after the date the alien is granted such status, unless the alien has applied for adjustment to permanent residence and such application has not been denied. See section 245A(b)(2)(C) of the Act.

On appeal, the applicant presents a statement arguing that he did not receive prior notices issued by Citizenship and Immigration Services (CIS).

The record reveals that the applicant was granted temporary resident status on May 19, 1991. The applicant's application for adjustment from temporary to permanent resident status was ultimately denied on March 26, 1997. The denial was based on the director's determination that the applicant failed to appear for a scheduled interview to complete his application for permanent resident status. There is no evidence in the record that the applicant appealed the denial of his application for permanent resident status.

On appeal, the applicant properly points out CIS's clerical error in entering an incorrect date in the prior notice of termination and its failure to consider the applicant's response to the notice of intent terminate. However, both points were adequately addressed in the director's motion to reopen where the prior termination, which was mistakenly dated February 11, 2004, was withdrawn. The director duly considered the applicant's address changes and properly noted that CIS's prior notices were sent to the applicant's most recent address of record. The director further pointed out that the applicant's signature appears on several of the return receipts, one of which accompanied the prior notice of intent dated December 30, 2004.

Thus, the applicant has failed to overcome the grounds cited in the director's most recent notice terminating the applicant's temporary resident status. The application for adjustment of status has been denied and it has been more than 43 months since the grant of temporary residence. Therefore, temporary residence shall be terminated.

¹ The first notice of termination was issued on July 31, 1995. The applicant submitted a timely appeal, Form I-694. The director reopened the matter and issued a notice of intent to terminate on December 30, 2004. A third notice of termination was subsequently issued on February 11, 2005. However, due to clerical and substantive errors, the director reopened the matter on April 4, 2005 and issued a fourth notice of termination, which is being adjudicated in the present matter.

² The director denied the applicant's Form I-698 application due to the applicant's failure to pass basic citizenship skills requirements.



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