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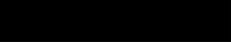
U.S. Citizenship
and Immigration
Services

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MAY 02 2007

FILE:



Office: TEXAS SERVICE CENTER

Date:

XHA 88 157 2071

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 applicant's temporary resident status was terminated by the Director, Texas Service Center. The case was remanded by the Chief, Legalization Appeals Unit. The director subsequently reaffirmed his decision to terminate the applicant's temporary resident status and the case is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

On March 25, 1999, 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 requested a copy of the record of proceeding and thirty days in which to submit a brief and/or additional evidence.

On December 9, 1999, the Chief of the Legalization Appeals Unit, now the AAO, remanded the case for compliance with the applicant's request for a copy of the record of proceeding.

The director subsequently complied with the applicant's request for a copy of the record of proceeding. To date, counsel has not submitted a brief or any additional evidence to supplement the appeal.

The director issued a new Notice of Termination on March 28, 2001, finding that the applicant had failed to submit any evidence to overcome the basis for the termination of her temporary resident status.

To date, neither counsel nor the applicant has responded to the 2001 notice of termination. Therefore, the record will be considered complete.

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 December 3, 1988. The 43-month eligibility period for filing for adjustment expired on July 3, 1992. The applicant's Form I-698, Application for Adjustment of Status from Temporary to Permanent Resident, was not received by the Immigration and Naturalization Service, now Citizenship and Immigration Services, until April 4, 1997. The director therefore denied the untimely I-698 application, and subsequently terminated the applicant's temporary resident status.

Counsel, in response to the Notice of Intent to Terminate, asserted that that the applicant was not aware that she needed to file a Form I-698 during the 43-month application period because she was never informed that she had been granted temporary resident status. Counsel submitted an affidavit from the applicant stating that she filed a Form I-698 on December 3, 1997 on her own

initiative, even though she had never been notified that she had been granted temporary resident status.

Approval notices for temporary residence were computer generated and mailed to applicants' addresses of record. Furthermore, while counsel contended that the applicant did not receive notice of approval of his temporary residence application, the record does reflect that the applicant successfully applied for a replacement temporary residence card on March 29, 1990.

The pertinent regulations at 8 C.F.R. 245a.3(b)(1) clearly state that an alien must apply for adjustment of status from temporary to permanent resident before the end of 43 months from the date of actual approval of temporary residence. The burden to duly file the I-698 application in a timely manner remains with the applicant. See 8 C.F.R. 245a.3(d). In this case, the I-698 was clearly filed subsequent to November 7, 1992.

As the applicant has not overcome the grounds 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 termination of the applicant's temporary resident status.

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