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U.S. Citizenship
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OCT 31 2007

FILE:

[REDACTED]
HOU-88-121-2077

Office: TEXAS SERVICE CENTER

Date:

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. The file has 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 F. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for Temporary Resident Status was terminated by the Director, Texas Service Center, and that decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director terminated the applicant's Temporary Resident Status because he found the evidence in the applicant's record indicated that he had not filed for adjustment of status to that of a Permanent Resident timely. In saying this, the director noted that the applicant was approved to adjust his status to that of a Temporary Resident on March 23, 1988. He went on to cite Immigration and Nationality Act § 245A(b)(2)(C) which states that the Attorney General shall provide for termination of Temporary Resident Status at the end of the 43rd month beginning after the date the alien is granted such status, unless the alien has filed an application for adjustment of such status pursuant to paragraph (1) and such application has not been denied.¹

It is noted that here, the AAO finds that the record indicates that the applicant initially did submit his Form I-698 timely. However, he did not include an additional processing fee required of applicants at the time if their forms were filed more than thirty-one (31) months after they were granted Temporary Resident Status. The record shows that the applicant's application for adjustment of status to that of a Permanent Resident was subsequently filed in 1994 and adjudication of that application was completed in February of 1997 when he failed to appear for his second interview and therefore did not demonstrate his ability to read, write, speak and understand ordinary English and/or to demonstrate his knowledge and understanding of the history and government of the United States.

The record shows that the Service acknowledged that it received the applicant's Form I-698 before April 10, 1992, but returned it to him at that time stating that it was not timely filed as it was not filed within thirty-one (31) months. The Immigration and Nationality Act of 1990 extended the filing deadline for those who had been granted Temporary Residence Status from thirty-one (31) months to Forty-three (43) months in 1990. The letter from the Texas Service Center submitted to the applicant at that time informed him that his Form I-698 was not filed within thirty-one (31) months and therefore required a late filing penalty in order to be processed. The letter went on to say that he could resubmit his Form I-698 for processing if he were to pay this fee. It is noted here that 8 C.F.R. § 245a.3(d)(6) states that an application for adjustment to Permanent Resident Status lacking the proper fee shall be returned to the applicant with a request for the proper fee. Therefore, it is found that the Service acted correctly by returning the applicant's form I-698 to him at that time. Because the applicant's Form I-698 was returned to the applicant, it is not in the record. The language of the letter in the record suggests it was, more likely than not, received before forty-three (43) months from the date of the approval of the applicant's Form I-687 had elapsed. However, it was not properly filed at that time as it lacked the proper processing fee.

The record shows that the Texas Service Center received and accepted the applicant's Form I-698 filed on April 5, 1994 and that he was subsequently interviewed on May 3, 1995 and given the opportunity to demonstrate his ability to read, write, speak and understand ordinary English and to demonstrate his

¹ It is noted here that Section 703(a)(2) of the Immigration Act of 1990, Act of Nov. 29, 1990, Pub. L. No. 101-649, 104 Stat. 4978, substituted "43rd month" for "31st month."

knowledge and understanding of the history and government of the United States. However, the applicant did not pass his examination and was given a second opportunity to take the examination pursuant to 8 C.F.R. § 245a.3(b)(4)(iii)(A)(2)(B) which states in pertinent part that applicants who fail to pass either the English literacy and/or the United States history and government tests shall be afforded a second opportunity after six (6) months to pass the test. The applicant was provided with a list of questions which were frequently asked during the examination at that time.

The applicant was sent a notice at his address of record by the Service on April 11, 1996 informing him that he was scheduled to appear for his second interview for adjustment of status to that of a Permanent Resident. As the applicant failed to appear for his second interview and as the Service noted that his notice to appear for his second interview was not returned to the Service as undeliverable, the Service denied his application for adjustment of status to a Permanent Resident on February 11, 1997.

The record shows that the applicant was informed that his application was denied by the Service on December 15, 1997 because he had not initially filed his Form I-698 within forty-three (43) months.

On appeal, the applicant submits a Form I-694 on which he requests that he receive a copy of his record of proceeding under the Freedom of Information Act (FOIA). He states that he understands that his period to file his brief and additional evidence is extended until thirty (30) days after the record is received. He goes on to say that his grounds of appeal will be identified and a brief will be submitted within thirty (30) days after he receives materials in response to his FOIA request. It is noted here that the applicant's Form I-694 was received by the Service on February 24, 1998. The Administrative Appeals Office (AAO) remanded the applicant's case to the Texas Service Center at that time to address the applicant's FOIA request. The Texas Service Center notified the applicant on March 27, 2001 that it would honor the applicant's FOIA request and if the applicant failed to respond within twelve weeks of the completion of that request that office would consider that the applicant did not overcome their reasons for termination. The record then shows that on May 18, 2001 the applicant's FOIA request was completed. The record does not contain a response from the applicant or a brief or additional evidence in support of the application since that date.

As stated in 8 C.F.R. § 103.3(a)(3)(iv), any appeal which is filed that fails to state the reason for appeal, or is patently frivolous, will be summarily dismissed.

On appeal, the applicant has not presented additional evidence. Nor has he addressed the grounds stated for termination. The appeal must therefore be summarily dismissed.

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