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U.S. Citizenship  
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Services

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LI

FILE:



Office: Nebraska Service Center

Date: OCT 28 2005

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director  
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 on appeal. The appeal will be sustained.

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, the applicant points out that notices from the Immigration and Naturalization Service (INS) were mistakenly sent to his old address, resulting in a lack of crucial information on his part.

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 (43) months of the date he/she was granted status as a temporary resident. See 8 C.F.R. § 245a.2(u)(1)(iv).

The applicant was granted temporary resident status on February 2, 1990. The 43-month eligibility period for filing for adjustment expired on September 2, 1993. The Application for Adjustment of Status from Temporary to Permanent Resident (Form I-698) was first submitted on May 9, 2002, and was later filed with the proper form of payment on August 21, 2002. The director denied the untimely application and subsequently terminated the applicant's temporary resident status.

On July 2, 1993, two months before the expiration of the 43-month period, the Director, Northern Regional Processing Facility sent a notice to the applicant in an attempt to remind him that he had not yet filed for adjustment to permanent residence. The applicant did not receive the notice because it was sent to an outdated address. The applicant had provided a new address on February 21, 1990, right after his application for temporary residence had been granted. It is apparent that the director never used the correct address whenever he sent notices to the applicant throughout the 43-month period. The applicant's assertion that he did not receive the notices, and was not aware that he needed to file the adjustment application within 43 months, is credible.

The failure of the director to mail notices to the correct address impacted on the applicant's ability to file a timely application for adjustment from temporary to permanent residence. Therefore, the premise that he can be held responsible for failing to file a timely application cannot be supported.

**ORDER:** The appeal of the termination of temporary residence in the legalization program is sustained, and the termination is withdrawn.