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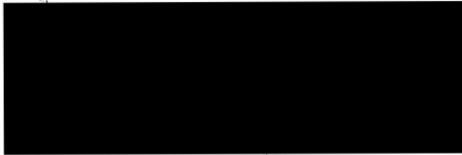
U.S. Department of Homeland Security
20 Mass Ave. N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:

XMA-88-136-5040

Office: Vermont Service Center

Date: DEC 18 2006

IN RE:

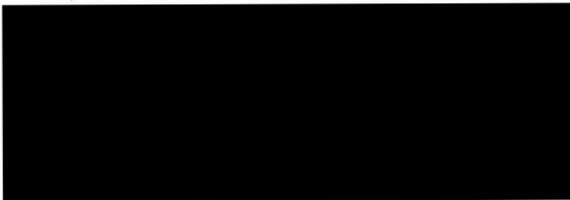
Applicant:



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 "R. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The termination of the applicant's temporary resident status by the Director, Vermont Service Center is before the Administrative Appeals Office on appeal. The appeal will be dismissed.

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 points to a regulation which, according to counsel, precludes the denial of an application for adjustment on the basis of a late filing.

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 August 26, 1988. The 43-month eligibility period for filing for adjustment expired on March 26, 1992. The Application for Adjustment of Status from Temporary to Permanent Resident (Form I-698) was first received June 18, 1997. The director therefore denied the untimely I-698 application, and subsequently terminated the applicant's temporary resident status.

When the applicant filed his untimely application, he stated that he had entrusted an unnamed travel agency to properly file his application during the 43-month period. Nevertheless, there is no waiver available, even for humanitarian reasons, of the requirement to file a timely application.

Counsel cites 8 C.F.R. § 245a.3(a)(2) and (3), which state, regarding applications for adjustment to permanent residence:

No application shall be denied for failure to timely apply before the end of 43 months from the date of actual approval of the temporary resident application. The Service Center Director shall sua sponte reopen and reconsider without fee any application which was previously denied for late filing.

Counsel contends that the regulation seemingly contradicts the statute, which states at section 245A(b)(2) of the Act, 8 U.S.C. § 1255a(b)(2):

Termination of temporary residence – The Attorney General shall provide for termination of temporary resident status granted an alien under subsection (a) –

(C) 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.

Counsel, therefore, urges Citizenship and Immigration Services to rule in favor of the applicant, given the purported contradiction between the regulation and the statute.

The above regulation stating that an adjustment application should be reopened if it was denied for lateness applies to applications that were denied because they had not been filed within *31 months* of the approval of temporary residence, but had been filed within *43 months*. The original eligibility period of 31 months was extended to 43 months to better enable applicants to learn English and civics, and file timely applications. There is no requirement that applications properly denied because they were filed after the expiration of the 43-month period must be reopened. This corresponds to the language of the statute, which clearly provides for termination when applications were not filed within 43 months.

The burden to file the adjustment application in a timely manner remains with the applicant. *See* 8 C.F.R. § 245a.3(d). The applicant's statements made on appeal have been considered. As the applicant has not overcome the grounds for termination of status, the appeal must be dismissed.

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