



U.S. Citizenship  
and Immigration  
Services

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FILE:

XVN 87 107 2082

Office: CALIFORNIA SERVICE CENTER

Date: MAY 25 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:

Self-represented

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 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.

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 states she was never advised of any deadline by the Immigration and Naturalization Service (INS) until it was too late.

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 February 25, 1988. The 43-month eligibility period for filing for adjustment expired on September 25, 1991. The Application for Adjustment of Status from Temporary to Permanent Resident (Form I-698) was first received by INS on June 12, 1998. The director therefore denied the untimely I-698 application, and subsequently terminated the applicant's temporary resident status.

On appeal, the applicant claims that she did not apply for adjustment in a timely fashion because she had not been properly advised of the need to do so. She states that she never received a letter of instructions, and that the INS employees whom she spoke to personally always advised her to wait.

The applicant's contention that she was not properly advised when she appeared at the INS office simply cannot be confirmed by a review of the record. INS and private voluntary organizations did widely publicize the requirement of applying for adjustment to permanent residence within the requisite period. Furthermore, INS did send notices to aliens' last known addresses, specifically advising them of the requirement. It is noted that the applicant had moved by the time she applied for adjustment to permanent residence, and any prior notices sent to her may have been sent to the original address, which would have been the only address INS had for her.

It is further noted that the original eligibility period of 31 months was extended to 43 months to better enable applicants to file timely applications. 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. It is not apparent that the applicant was improperly advised by INS. As the applicant has not overcome the basis for termination of status, the appeal must be dismissed.

Beyond the director's decision, the applicant is ineligible for temporary residence because she has been convicted of three misdemeanors. The applicant was convicted of the following misdemeanors under the California Vehicle Code:

1. Driving With License Suspended, docket # [REDACTED] February 27, 2001;
2. Hit and Run/Property Damage, docket # [REDACTED] September 3, 2003;
3. Driving With Suspended License, docket # [REDACTED] September 3, 2003;

The temporary resident status of an alien who has been convicted of a felony or three or more misdemeanors in the United States may be terminated at any time. 8 C.F.R. § 245a.2(u)(1)(iii). Thus, the applicant is no longer eligible for temporary residence on this basis as well.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9<sup>th</sup> Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a de novo basis).

The applicant is ineligible for temporary residence for the above stated reasons, with each considered as an independent and alternative basis for denial.

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