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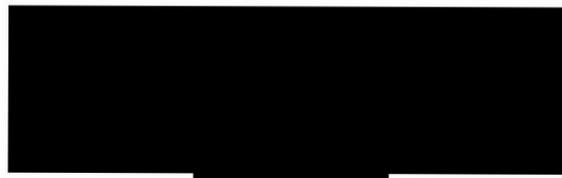
U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: **SEP 27 2006**  
XNK 88 509 0124

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:

SELF-REPRESENTED

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 P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The termination of temporary resident status by the Director, California Service Center, 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 the applicant failed to file the Form I-698, Application for Adjustment of Status from Temporary to Permanent Resident, within the 43-month application period as required by section 245A(b)(2)(C) of the Immigration and Nationality Act (Act), 8 U.S.C. § 1255a(b)(2)(C).

On appeal, the applicant contends that the Immigration and Naturalization Service or the Service (now Citizenship and Immigration Services, or CIS) contemplated denying his case and withheld adjudication of his application for so long that he believed his case was lost in the system. The applicant asserts that he never received notice from the Service informing him that he had been granted temporary resident status on August 27, 1993, until well after the 43-month application had expired. The applicant includes copies of previously submitted documents in support of the appeal.

The status of an alien lawfully admitted for temporary residence under section 245A(a)(1) of the Immigration and Nationality Act (Act), 8 U.S.C. § 1255a(a)(1), 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 43 months of the date he/she was granted status as a temporary resident. 8 C.F.R. § 245a.2(u)(1)(iv).

The applicant was granted temporary resident status on August 27, 1993. The 43-month eligibility period for filing for adjustment expired on March 27, 1997. The Application for Adjustment of Status from Temporary to Permanent Resident (Form I-698) was filed on October 14, 2003. The director therefore denied the untimely Form I-698 application on August 28, 2004, and subsequently terminated the applicant's temporary resident status.

The applicant contends that the Service contemplated denying his case and withheld adjudication of his application for so long that he believed his case was lost in the system. The applicant asserts that the Service never informed him that he had been granted temporary residence until well after the 43-month application period had expired. The record shows that the Service did indeed issue a notice of intent to deny to the applicant dated June 12, 1989, and that the applicant submitted a response and additional evidence on July 24, 1989, in an attempt to overcome the stated grounds of the intended denial. The record further shows that a Service officer determined that the applicant had overcome the basis of the intended denial and subsequently approved his Form I-687, Application for Status as a Temporary Resident under Section 245A of the INA, on August 27, 1993. A review of Service records reveals that upon approval of a Form I-687 application and a corresponding entry of such information in Service computer records, a computer-generated notice of approval was issued and mailed to the applicant at his last known address of record. In this particular case, the record does not contain any evidence demonstrating that the approval notice mailed to the applicant was returned as undeliverable. Therefore, the assertion that the applicant never received notice that he had been granted temporary resident status by the Service must be considered to be without merit.

The Service and private voluntary organizations widely publicized the procedures of the amnesty program, including the necessity of applying for permanent residence. If the applicant required assistance in pursuing his application, such assistance was widely available with inquiries to the Service, from private nonprofit Qualified Designated Entities, and from private legal assistance resources. Furthermore, the original eligibility period of 31 months was extended to 43 months to better enable applicants to file timely applications. The burden to duly file the Form I-698 adjustment application in a timely manner remains with the applicant. 8 C.F.R. § 245a.3(d).

The statements on appeal have been considered. Nevertheless, there is no waiver available, even for humanitarian reasons, of the requirements stated above. 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.