



U.S. Citizenship
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FEB 05 2007

FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date:
XWI 88 147 0038

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. 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. P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The termination of temporary resident status by the Director, Nebraska 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 apply for adjustment to permanent resident status within the required period.

On appeal, the petitioner submits a statement.

Section 245A(b)(2) of the Act states, in pertinent part:

Termination of temporary residence. – The [Secretary of Homeland Security] 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.

The corresponding regulation at 8 C.F.R. § 245a.2(u)(1)(iv) further prescribes that 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 “[t]he alien fails to file for adjustment of status from temporary resident to permanent resident on Form I-698 within forty-three (43) months of the date he/she was granted status as a temporary resident[.]”

The record in this case shows that the applicant was granted temporary resident status under section 245A(a)(1) of the Act on January 4, 1990. The petitioner did not file a Form I-698, Application to Adjust Status From Temporary to Permanent Resident, until August 10, 2001, which was over eight years after the expiration of the 43-month filing period.

On appeal, the applicant states that he never received notice of his need to file an adjustment application. The record contains a copy of the courtesy notice that the former Immigration and Naturalization Service (INS) sent to the applicant on June 15, 1993 at his last address of record, which advised him of the need to timely file his adjustment application. Regardless of whether or not the applicant received this notice, he bore the burden to timely file his application for adjustment from temporary to permanent resident status within the prescribed 43-month period. *See* 8 C.F.R. § 245a.3(b)(1). The statute and regulations do not allow a waiver of untimely filing.

The applicant did not file his Form I-698 within the requisite 43-month period. Accordingly, the applicant's status was properly terminated pursuant to section 245A(b)(2) of the Act and the corresponding regulation at 8 C.F.R. § 245a.2(u)(1)(iv).

In his decision, the director properly set forth a valid basis for termination of the applicant's status. The applicant's statements on appeal fail to overcome the basis for the termination. Accordingly, the appeal will be dismissed.

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