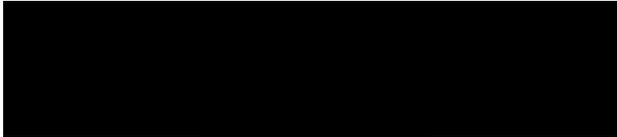




U.S. Citizenship
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Services

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FILE: [Redacted]
XSR 88 502 2098

Office: CALIFORNIA SERVICE CENTER

Date: FEB 06 2007

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:



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's former counsel asserted that the applicant never received the notice of intent to terminate dated November 22, 2004. Counsel further asserted that the applicant submitted a Form I-698 in 1996.

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 September 28, 1993. The 43-month eligibility period for filing for adjustment expired on April 27, 1997. The applicant's Form I-698, Application for Adjustment of Status from Temporary to Permanent Resident, was not received by the Immigration and Naturalization Service (INS), now Citizenship and Immigration Services (CIS), until February 17, 2004. The director therefore denied the untimely I-698 application, and subsequently terminated the applicant's temporary resident status.

On appeal, counsel stated that the applicant never received the Notice of Intent to Terminate. Counsel provided an affidavit from the applicant stating that he submitted his Form I-698 in 1996 accompanied with a personal check to pay the application fees. Counsel also provided letters from the applicant's sisters, [REDACTED] and [REDACTED], stating that "the letter from the INS was returned after a month and a half."

Neither counsel nor the applicant has submitted any evidence to corroborate the applicant's claim that he filed a timely Form I-698 in 1996. There is no indication in the record of proceedings or in CIS computer records that the applicant filed a Form I-698 in 1996.

The record reveals that the Notice of Intent to Terminate, dated November 22, 2004 was mailed to the applicant at the address he listed on his Form I-698, [REDACTED] but was returned to the California Service Center as undeliverable mail. The Notice of Termination was subsequently mailed to the applicant at the same address, and the record contains a postal return receipt signed by the applicant on January 31, 2005, acknowledging receipt of the Notice of Termination. Therefore, it cannot be concluded that the applicant's failure to receive the Notice of Intent to Terminate was due to any error on the part of CIS.

The statements by the applicant and his sisters have been considered. Nevertheless, there is no waiver, even for humanitarian reasons, for failure to file the Form I-698 within the 43-month

application period. As the applicant has not overcome the basis for termination of status, the appeal must be dismissed.

Beyond the decision of the director, it is noted that the applicant was arrested in Las Vegas, Nevada, on September 4, 2006, and charged with two counts of obtaining or possessing a credit card without the cardholder's consent in violation of section 205.690 NRS, a felony. The record contains no information regarding the final court disposition of this arrest.

It is further noted that the applicant filed a Form I-821, Application for Temporary Protected Status, with the California Service Center on April 22, 2005, under receipt number WAC 05 204 73441. The Director of the California Service Center denied that application on September 29, 2006.

Finally, it is noted that the applicant is currently in removal proceedings before the Executive Office for Immigration Review. On October 12, 2006, an Immigration Judge in Las Vegas, Nevada, granted the applicant's motion for a change of venue from Las Vegas to Los Angeles, California. There is no indication in the record that a removal hearing has been scheduled before the Immigration Court in Los Angeles, California.

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.