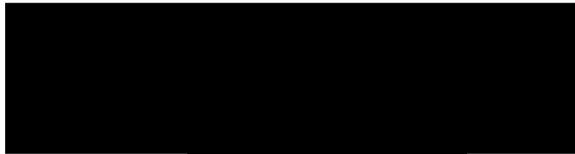


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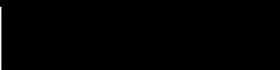
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Office: TEXAS SERVICE CENTER

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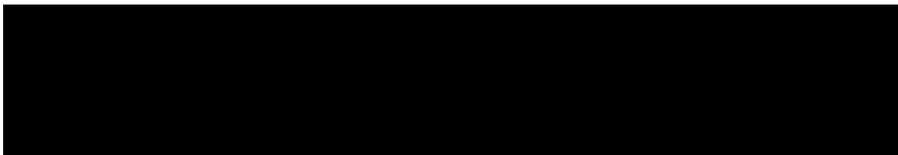
Applicant:



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 "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The termination of temporary resident status by the Director, Texas 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 requested a copy of his administrative record and indicated that he would file a brief within 30 days after the record was received. The applicant was sent a copy of his record on July 25, 2000. To date, over six years later, the AAO has received no brief or additional evidence in support of the appeal.

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 April 11, 1988. The petitioner did not file a Form I-698, Application to Adjust Status From Temporary to Permanent Resident, until February 7, 1998, which was over six years after the expiration of the 43-month filing period.

On appeal, the applicant's former representative explained that he was unable to timely file his Form I-698 because for several years there was no place in Oklahoma that was accredited for the requisite study of the English language and the applicant did not receive his Certificate of Satisfactory Pursuit until November 14, 1997. While we recognize the difficulties the applicant may have faced in obtaining his certificate, he still 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.