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U.S. Department of Homeland Security
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U.S. Citizenship
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Services

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FILE: [REDACTED]
XBK 88 213 7043

Office: VERMONT SERVICE CENTER

Date: JAN 19 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: 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, Vermont 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 that he failed to file his application for adjustment of status from temporary to permanent resident during the 43-month application period due to unfortunate personal circumstances.

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 August 22, 1988. The 43-month eligibility period for filing for adjustment expired on March 21, 1992. The Application for Adjustment of Status from Temporary to Permanent Resident (Form I-698) was not received by the Immigration and Naturalization Service, now Citizenship and Immigration Services, until November 2, 1998, more than six years after the expiration of the 43-month application period. The director, therefore, denied the untimely Form I-698 application, and subsequently terminated the applicant's temporary resident status.

On appeal, the applicant states that he never received the Notice of Intent to Terminate his temporary resident status. The applicant further states:

At that time I was a riot victim of [REDACTED] I was totally devas[ta]ted (Home) by fire. I was traumatize[d], I didn't have a decent home and a job. I was depressed, I had lost everything. Please be considerate."

It is noted that the Notice of Intent to Terminate the applicant's temporary resident status and the Notice of Termination were both mailed to the applicant's address of record.

The applicant's statements made on appeal have been considered. Nevertheless, the fact remains that the applicant failed to file his Form I-698 within the 43-month application period. There is no waiver available, even for humanitarian reasons, of the requirement to file a timely adjustment application. The burden to file the adjustment application in a timely manner remains with the applicant. See 8 C.F.R. § 2435a.3(d). As the applicant has not overcome the basis for termination of status, the appeal must be dismissed.

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