



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
XHU 88 174 1081

Office: TEXAS SERVICE CENTER

Date: JUN 13 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, Texas 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 did not know of the filing deadline and was finally able to file his adjustment application when he received copies of his legalization file and got assistance from a non-profit organization.

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. 8 C.F.R. § 245a.2(u)(1)(iv).'

The applicant was granted temporary resident status on November 29, 1988. The 43-month eligibility period for filing for adjustment expired on June 29, 1992. The Application for Adjustment of Status from Temporary to Permanent Resident (Form I-698) was first received by Citizenship and Immigration Services (CIS) on November 5, 2002. The director therefore denied the untimely I-698 application in a decision dated June 10, 2005, and subsequently terminated the applicant's temporary resident status. It is noted that the applicant attempted to appeal the denial of the Form I-698. However, in a notice dated August 10, 2005, the director informed the applicant that he could not appeal a denial that was based on the late filing of an adjustment application. Accordingly, the applicant was notified that the appeal he filed would be applied to the notice of termination.

On appeal, the applicant claims that he did not apply for adjustment in a timely fashion because he was not properly advised of the need to do so.

However, the applicant's contention that he was not advised of 43-month deadline to filing an adjustment application simply cannot be confirmed by a review of the record. CIS and private voluntary organizations did widely publicize the requirement of applying for adjustment to permanent residence within the requisite period. Furthermore, CIS did send notices to aliens' last known addresses, specifically advising them of the requirement. It is noted that the applicant had moved by the time he applied for adjustment to permanent residence, and any prior notices sent to him may have been sent to the original address, which would have been the only address CIS had for him.

It is further noted that the original eligibility period of 31 months was extended to 43 months to better enable applicants to file timely applications. The burden to file the adjustment application in a timely manner remains with the applicant. *See* 8 C.F.R. § 245a.3(d).

The applicant's statements made on appeal have been considered. As the applicant has not overcome the basis for termination of status, the appeal must be dismissed.

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.

