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U.S. Citizenship
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Services

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MAR 12 2007

[Redacted]

FILE:

[Redacted]

Office: TEXAS SERVICE CENTER

Date:

XSW 88 076 1010

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:

[Redacted]

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, counsel for the applicant asserts that the director erroneously terminated the applicant's temporary resident status.

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 July 20, 1988. The 43-month eligibility period for filing for adjustment expired on February 20, 1992. The applicant's Form I-698, Application to Adjust Status from Temporary to Permanent Resident, was not received by the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), until June 11, 1993, 13 months after the expiration of the 43-month application period. The director therefore denied the untimely I-698 application, and subsequently terminated the applicant's temporary resident status.

On appeal, counsel points out that the service center director stated in the Notice of Termination that the applicant's Form I-698 was denied on July 7, 2005. Counsel states that the applicant received a Citizenship and Immigration Services (CIS) notice dated July 7, 2005, informing the applicant that his application had been reopened and he would receive a new decision under separate cover. Counsel encloses a photocopy of a CIS notice dated July 7, 2005, informing the applicant that his application had been reopened and he would receive a new decision under separate cover. Counsel asserts that the service center director cannot terminate the applicant's temporary resident status when the applicant's Form I-698 has not been denied.

The record reveals that District Director, Miami, Florida, mailed a Notice of Intent to Deny the applicant's Form I-698 to him on March 23, 1999, but the notice was returned to the Miami District Office as undeliverable mail. It is noted that the notice of intent was mailed to the wrong address. The notice was mailed to the applicant at "[REDACTED] Riveria Beach, Florida 33404." The address listed by the applicant on his Form I-698 was "[REDACTED], Rivera Beach, Fl 33404." Both addresses are incorrect. The applicant lived at that time in Riviera Beach, Florida, not Riveria Beach, Florida, the address to which the Miami District Office mailed the notice of intent to deny, or Rivera Beach, Florida, the city of residence listed by the applicant on the Form I-698.

The Form I-698 contained in the record of proceeding was incorrectly stamped "Denied, March 23, 1999" at the Miami District Office. The application cannot have been denied on the date the notice of intent to deny was issued. CIS computer records indicate that the application was denied on March 22, 1999. It is not clear why the computer record indicates that a denial was issued one day prior to the date the notice of intent to deny was mailed to the applicant. In any case, the record does not contain a copy of a denial decision dated March 22, 1999 or March 23, 1999.

On July 7, 2005, the service center director sent a notice to the applicant informing him that the case had been reopened and a decision would be sent under separate cover. On the same day, July 7, 2005, the director mailed to the applicant under separate cover a decision denying the Form I-698 because the application was not filed during the 43-month application period. The service center director reopened the case because it appeared that a previous denial decision had been issued on March 22 or March 23, 1999, but no copy of such decision was contained in the record of proceeding. The notice informing the applicant that the case would be reopened and the denial decision, both dated July 7, 2005, were mailed to the applicant at [REDACTED] West Palm Beach, FL 33404" on July 8, 2005. The applicant apparently received the reopening notice, but the denial decision was returned to the Texas Service Center marked "Return to Sender, No Such Number." The notices were mailed to an incorrect address. The applicant's correct address is "[REDACTED] West Palm Beach, FL 33404," not "[REDACTED] West Palm Beach, FL 33404." The subsequent Notice of Intent to Terminate and the Notice of Termination were mailed to the correct address and were received by the applicant.

Counsel points out that the service center director issued the Notice of Termination prior to receipt of her response to the Notice of Intent to Terminate. Counsel submits a photocopy of a FedEx Customer Support Trace indicating that counsel mailed her response to the Texas Service Center on September 8, 2005, and it was received at the Texas Service Center on September 9, 2005.

It should be pointed out that the service center director, in the Notice of Intent to Terminate dated August 6, 2005, granted the applicant 30 days from the date of the Notice of Intent to Terminate, until September 6, 2005, to respond to the notice. Counsel did not mail her response to the notice until September 8, 2005, two days after the specified 30-day period.

The sole issue to be determined in this proceeding is whether the applicant filed her Form I-698 within the 43-month application period. The fact that two notices were mailed to the applicant at an incorrect address and returned to CIS as undeliverable mail, while regrettable, do not, and cannot, mitigate the fact that the applicant failed to file his Form I-698 in a timely manner.

Counsel's statements made on appeal 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.

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.