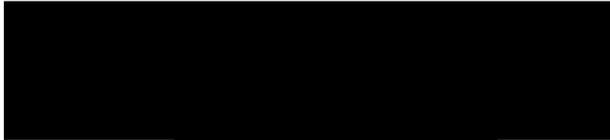


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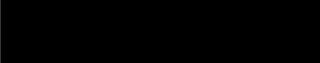
U.S. Citizenship
and Immigration
Services

PUBLIC COPY



MAR 12 2007

FILE:



XLU 88 177 1042

Office: NEBRASKA SERVICE CENTER

Date:

IN RE:

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:

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The termination of the applicant's temporary resident status by the Director, Nebraska Service Center, is before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

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 his attorney failed to inform him of the time restrictions for filing for adjustment to permanent resident status and requests another opportunity to submit another application for permanent 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 November 15, 1996. The 43-month eligibility period for filing for adjustment expired on June 5, 2000. The Application for Adjustment of Status from Temporary to Permanent Resident (Form I-698) was filed on June 23, 2004. The director therefore denied the untimely I-698 application, and subsequently terminated the applicant's temporary resident status.

The director issued a notice of intent to terminate temporary resident status on March 24, 2005. The applicant filed a Form I-694 appeal on May 31, 2005 in an attempt to appeal the notice of intent to terminate. The director's notice of termination is dated July 18, 2005. In order to properly file an appeal, the regulation at 8 C.F.R. § 245a.2(p) provides that an application for temporary resident status may be appealed to the Administrative Appeals Office within thirty (30) days *after* service of the notice of denial. Here, the applicant filed an appeal prior to the issuance of a final decision.

The authority to adjudicate appeals is delegated to the AAO by the Secretary of the Department of Homeland Security (DHS) pursuant to the authority vested in him through the Homeland Security Act of 2002, Pub. L. 107-296. *See* DHS Delegation Number 0150.1 (effective March 1, 2003); *see also* 8 C.F.R. § 2.1 (2003). The AAO exercises appellate jurisdiction over the matters described at 8 C.F.R. § 103.1(f)(3)(iii) (as in effect on February 28, 2003), (with one exception - petitions for approval of schools under § 214.3 are now the responsibility of Immigration and Customs Enforcement (ICE)).

There is no regulatory provision that would permit the AAO to adjudicate an appeal for a petition or application that has not been adjudicated. Accordingly, the appeal must be rejected.

ORDER: The appeal is rejected.