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

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FILE: [REDACTED]
 [REDACTED] XLB 87 074 1056

Office: CALIFORNIA SERVICE CENTER

Date: MAR 14 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.

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

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The termination of the applicant's temporary resident status by the Director, California 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 submits a statement claiming to have filed a timely application to adjust her status to that of a permanent resident. However, she requested an additional 18 months in order to review family records. It is noted that there is no statute or regulation that allows the applicant an extension of time beyond the 30-day period specified in the Form I-694. Therefore, the applicant's request is denied. The AAO will consider all evidence and information submitted thus far in making a determination in the present matter.

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 record shows that the applicant was granted temporary resident status on March 3, 1988. The 43-month eligibility period for filing for adjustment expired on October 3, 1991. 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 12, 2003. The director therefore denied the untimely I-698 application, and subsequently terminated the applicant's temporary resident status.

On appeal, the applicant claims that she, along with her parents, did apply for adjustment in a timely fashion. However, the applicant provides no evidence to show that she filed a Form I-698 in addition to the one on record, which is shown as having been filed on November 12, 2003, more than 12 years after the 43-month period had expired.

The AAO acknowledges the applicant's statements in response to the notice of intent to terminate in which the applicant discussed her marriage to a U.S. citizen and her belief that she would become a permanent resident based on his U.S. citizenship. The applicant further claimed that she was unaware of a time limitation for filing an application for permanent resident, thereby suggesting that she did not know about the 43-month statutory period. However, the AAO notes that Citizenship and Immigration Services (CIS) and private voluntary organizations widely publicized the requirement of applying for adjustment to permanent residence within the requisite period with regard to temporary residents. Furthermore, CIS did send notices to aliens' last known addresses, specifically advising them of the requirement.

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. While the applicant may have confused the permanent resident status she could have derived from her marriage to a U.S. citizen with the permanent residence she could have attained through her status as a temporary resident, her misunderstanding does not excuse her from the statutory burden of having to file a timely Form I-698 to adjust her status to that of a permanent resident. See 8 C.F.R. § 245a.3(d).

The applicant's statements made on appeal have been considered. There is no evidence that the applicant was improperly advised by CIS. 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.