



U.S. Citizenship  
and Immigration  
Services

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



PUBLIC COPY



MAR 22 2007

FILE:



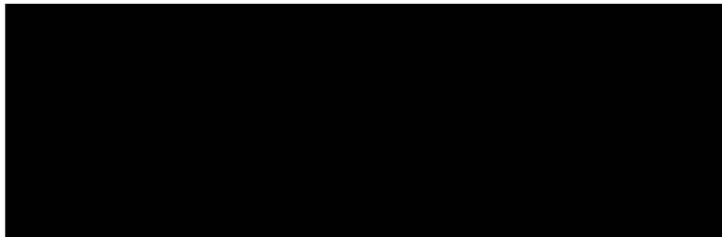
Office: TEXAS SERVICE CENTER

Date:

XHU 88 184 8104

IN RE:

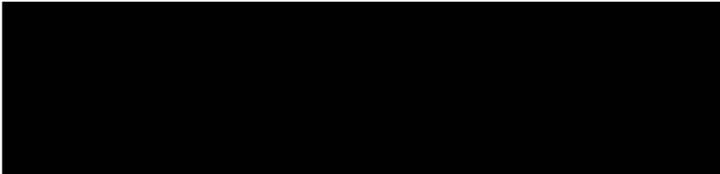
Applicant:



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:



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 concedes that the applicant failed to file his Form I-698, Application for Adjustment of Status from Temporary to Permanent Resident, in a timely manner. Counsel contends that the slow response and denial of the application constitutes misconduct on the part of Citizenship and Immigration Services (CIS).

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 September 14, 1989. The 43-month eligibility period for filing for adjustment expired on April 14, 1993. The applicant's Form I-698 was not received by the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), until September 12, 1996. The director therefore denied the application and terminated the applicant's temporary resident status.

On appeal, counsel for the applicant contends that the ten-year delay in the processing of the applicant's Form I-698 was "highly prejudicial" to the applicant and deprived him of the "statutory right to prompt action and reasonable processing of applications." Counsel asserts that the "extreme delay" denied the applicant an opportunity to apply for adjustment of status under section 245(i) of the Act or for adjustment of status under the LIFE Act legislation.

While it is true that the applicant's Form I-698 was not adjudicated until 2005, the fact remains that the applicant failed to file his Form I-698 during the 43-month application period. If the application had been adjudicated within a few months of its filing in 1996, it still would have been denied, and the applicant's temporary resident status terminated, due to the applicant's failure to file the application within the 43-month application period.

Counsel asserts that the applicant was denied the opportunity to apply for permanent resident status under the LIFE Act or under section 245(i) of the Act because he believed that his Form I-698 was still pending. The LIFE Act related to a particular class of individuals who had been informed that they were not eligible to apply for temporary resident status under section 245a of the Act at local legalization offices during the initial application period ending on May 4, 1988, **and** who applied for membership in the CSS, LULAC, or Zambrano class action lawsuits. The applicant applied for, and was granted, temporary resident status during the initial legalization application period, and subsequently filed a Form I-698 in 1996. He was not prevented or

discouraged from applying for temporary resident status and, therefore, does not qualify as a class member in the CSS, LULAC, or Zambrano class action lawsuits. Counsel has not submitted any independent evidence to corroborate his assertion that the applicant would have qualified to apply for adjustment of status under section 245(i) of the Act.

Counsel's assertions 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.

It is further noted that the record reveals the following criminal history:

1. On March 12, 1989, the applicant was arrested in Houston, Texas, and charged with theft and unauthorized use of a vehicle. On March 15, 1989, the applicant pled guilty in the District Court of Harris County, Texas, to the reduced charge of attempted auto theft, a Class A misdemeanor. The applicant was sentenced to serve six months in the Harris County Jail. [REDACTED]
2. On September 7, 1996, the applicant was charged by the Houston Police Department of being an inside fugitive. The record does not contain any further information regarding this charge.
3. On March 12, 1998, the applicant pled *nolo contendere* (no contest) in the County Criminal Court of Harris County at Law No. 12, Harris County, Texas, of driving under the influence of alcohol, a Class B misdemeanor. The applicant was ordered to serve 180 days imprisonment in the Harris County Jail with imposition of sentence suspended, placed on probation for a period of one year, and ordered to pay a \$500 fine. The applicant was discharged from probation by the court on March 30, 1999, because the applicant satisfactorily fulfilled the conditions of his probation for the full term of the probationary period to which he was sentenced. [REDACTED]
4. On August 30, 1996, the applicant was charged by the Houston Police Department with aggravated sexual assault on a child under 14, a first-degree felony. On August 5, 1997, a jury in the 185<sup>th</sup> District Court of Harris County, Texas, found the applicant not guilty of the charge and the applicant was discharged from custody. [REDACTED]

The applicant has failed to establish his eligibility for status as a temporary resident.

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