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U.S. Citizenship  
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Services

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MAY 03 2007

FILE:

XDA 88 012 3040

Office: TEXAS 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:

**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 contends that under 8 C.F.R. § 245a.3(a)(3), the service center director "shall *sua sponte* reopen and reconsider without fee any application was previously denied for late filing."

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 5, 1990. The 43-month eligibility period for filing for adjustment expired on February 5, 1994. The applicant's Form I-698 was not received by Citizenship and Immigration Services (CIS) until March 18, 2005, eleven years after the expiration of the 43-month application period. The director therefore denied the application and terminated the applicant's temporary resident status.

On appeal, counsel for the applicant points out that 8 C.F.R. § 245a.3(a)(3) states that "[t]he Service Center Director shall *sua sponte* reopen and reconsider without fee any application which was previously denied for late filing." Counsel contends that CIS has the ability to accept a Form I-698 after the expiration of the 43-month application period.

The revised implementing regulation at 8 C.F.R. 245a.3(a) disallowing denial of an I-698 "before" the end of 43 months from the date of approval refers to the extension of the filing period. The filing period for I-698 applications was extended from 31 months to 43 months to enhance the availability of this immigration benefit to temporary resident aliens. The regulation cited on appeal bars denial of applications based on the expiration of the earlier 31-month eligibility period. In this case, the applicant's temporary resident status was properly terminated, because the applicant filed his adjustment application subsequent to the expiration of the 43-month application period. For these reasons, counsel's contention is not persuasive.

Counsel asserts that the applicant never received correspondence from the Immigration and Naturalization Service (INS), now CIS, informing him that his application had been approved even though his address of record at that time was correct. Counsel further states that, even if the applicant had receipt the notice informing him that his application for temporary residence had been granted, the notice did not contain any information informing the applicant of the requirement to file the Form I-698 within the 43-month application period.

As counsel himself admitted, the notice informing the applicant that he had been granted temporary residence was mailed to the correct address. INS and private voluntary organizations widely publicized the requirement of applying for adjustment to permanent residence within the requisite period. Furthermore, INS sent notices to aliens' last known addresses, specifically advising them of the requirement.

Additionally, as previously stated, 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. 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 according to an FBI report based upon the applicant's fingerprints, he was arrested and charged with Aggravated Assault on May 18, 1984, in Carthage, Texas. On May 31, 1989, the director asked the applicant to submit certified copies of the final court disposition of his arrest. The applicant, in response, submitted evidence to show that the charges were dropped.

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.