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FILE:



XMA-88-135-06022

Office: VERMONT SERVICE CENTER

Date: NOV 20 2007

IN RE:

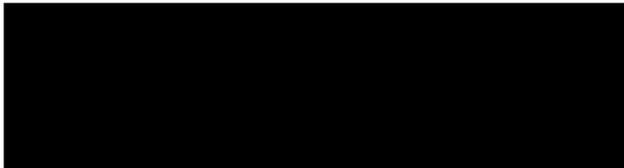
Applicant:



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. The file has 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. P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The termination of the applicant's temporary resident status by the Director, Vermont 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 respond to the Notice of Intent to Terminate. Specifically, the director found that the applicant's Form I-698 Application to Adjust Status from Temporary to Permanent Resident Status was not filed within 43 months after the approval of her application for temporary resident status. The applicant failed to present sufficient evidence indicating that she had filed to adjust to permanent resident status within 43 months.

On appeal, the applicant stated that she filed Form I-698 in a timely fashion. She initially filed Form I-698 in June 1990 and the application was rejected. The applicant stated that she made the required corrections and resubmitted the Form I-698, and then never heard anything further about the adjudication of her Form I-698. In September 1996 the Immigration and Naturalization Service (INS), now Citizenship and Immigration Services (CIS) brought proceedings against the applicant alleging she had abandoned her residency status. The applicant stated that she successfully challenged these allegations and was admitted as a returning resident by an immigration judge on November 19, 1998. She stated that she inquired with the immigration judge regarding how to obtain a card reflecting her status, and he instructed her to file a duplicate Form I-698. On appeal, the applicant attached copies of a notice rejecting a Form I-698 on June 15, 1990, and an Order of the Immigration Judge admitting the applicant to the United States as a returning resident on November 19, 1998. The applicant provided no evidence that she properly filed Form I-698 within the 43-month eligibility period.

The status of an applicant lawfully admitted for temporary resident status under section 245A(a)(1) of the Act may be terminated at any time if the applicant fails to file for adjustment of status from temporary to permanent resident on Form I-698 within forty-three months of the date the applicant 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 August 22, 1988. The 43-month eligibility period for filing for adjustment expired on March 21, 1992. The record indicates the Application for Adjustment of Status from Temporary to Permanent Resident (Form I-698) was initially received by INS within the 43-month eligibility period but was rejected on June 15, 1990 because the application had not been signed. On March 22, 1999, INS issued a notice indicating its intention to terminate the applicant's temporary resident status because the I-698 application was not filed within the 43 month eligibility period. The applicant did not submit evidence that she properly filed Form I-698 within 43 months of establishing temporary residence. Therefore, the director found the applicant had not filed a timely application to adjust from temporary to permanent resident status and terminated the applicant's temporary resident status in the notice dated May 14, 1999.

The applicant's statements made on appeal have been considered. The applicant has presented no evidence that she properly filed Form I-698 during the 43-month eligibility period. 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.