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U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS2090
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U.S. Citizenship and Immigration Services

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[redacted]

APR 03 2009

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date:
WAC-04-186-50139

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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The termination of temporary resident status by the Director, California Service Center, is now before the Administrative Appeals Office on appeal. The appeal is sustained.

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 asserts that he filed a Form I-698, application for adjustment of status, on November 2, 1991. The applicant states that he sent the application via certified mail to the Immigration and Naturalization Service (INS) Regional Processing Facility in Laguna Niguel, California. The applicant contends that the Regional Processing Facility received the application on November 6, 1991.

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 burden to file the adjustment application in a timely manner remains with the applicant. *See* 8 C.F.R. § 245a.3(d).

The record reflects that the applicant was granted temporary resident status on September 23, 1988. The 43-month eligibility period for filing for adjustment expired on April 22, 1992. The Form I-698, Application for Adjustment of Status from Temporary to Permanent Resident, was filed with the correct fee on July 29, 2003. The director therefore administratively closed the untimely I-698 application, and terminated the applicant's temporary resident status.

The director issued a notice of intent to terminate to the applicant on September 28, 2004. In rebuttal to this notice, the applicant asserted that he filed a Form I-698, application for adjustment of status, on November 2, 1991. He stated that he sent this application via certified mail to the INS Regional Processing Facility in Laguna Niguel, California. The applicant stated that he appeared at the East Los Angeles INS office to inquire about his pending application, and was instructed to file a Form I-698. The applicant stated that he filed the Form I-698 as instructed on July 29, 2003. The applicant asserted that he later learned from his mother that she had assisted him with a previous Form I-698.[1] The applicant noted that his mother has copies of the application and the certified mail return receipts. The applicant furnished these documents as corroborating evidence. The applicant noted that he no longer has a copy of the money order for the application filing fee and he was not given a copy of his medical examination.

The director terminated the applicant's temporary residence on November 1, 2004. In an undated termination letter, the director stated that the evidence the applicant provided USCIS does not show proof of a money order remittance or that INS cashed a money order remittance

[1] The record reflects that the applicant was 17 years old when he was granted temporary resident status.

regarding the filing of the Form I-698. The director determined that therefore the applicant is still subject to termination of his temporary resident status.

On appeal, the applicant reiterates the basis for his earlier rebuttal to the notice of intent to terminate. The applicant also asserts that his money order receipt was either lost of misplaced. The applicant states that it is been over thirteen years and most individuals do not keep records for such a long time. The applicant furnished copies of the following documents: a Form I-698 showing a November 2, 1991 signature date; a U.S. Postal Service Domestic Return Receipt addressed to the USINS Regional Processing Facility in Laguna Niguel, California, bearing a November 6, 1991 delivery date; and a U.S. Postal Service Receipt for Certified Mail postmarked November 2, 1991.

The AAO notes that INS and private voluntary organizations widely publicized the requirement of applying for adjustment of status to permanent residence within the requisite period. INS sent notices to aliens' last known addresses, specifically advising them of the requirement. The original eligibility period of filing for adjustment of status to permanent residence was 31 months. This period was extended to 43 months to better enable applicants to file timely applications.

On December 20, 1990, INS field offices were sent the following instructions in IMMACT '90 Wire #16 Cable 1588-C: "All field sites should be advised to extend an I-688 when an alien is encountered *and* it has been less than 42 months since that alien was granted temporary resident status...A check of the LAPS database will provide the actual approval date of the temporary resident application. *The alien should be advised that he/she has X amount of time left to apply for permanent residence.* (emphasis supplied) Aliens should be provided with another M-306, a temporary resident's guide to applying for permanent residence..."

On February 3, 1992, INS published in the Federal Register the final rule regarding the one-year extension of the deadline for filing applications for adjustment from temporary to permanent residence for legalized aliens. INS noted that the forty dollar late filing fee was based on estimated additional administrative costs, which include, mailers to each eligible applicant who has not yet filed an application for adjustment from temporary to permanent residence. 57 Fed. Reg. 3925-3926 (February 3, 1992).

The record in the present case reflects that a procedural error prevented the applicant from receiving the aforementioned mailer notification from INS. During the applicant's legalization interview for temporary resident status, he changed his address to [redacted], Santa Fe, California. This change was made on his Form I-687, application for status as a temporary resident. However, the applicant's change of address was not updated in the INS database system. On February 2, 1991, the director sent a mailer to the applicant at his previous address, [redacted] Redondo Beach, California. The mailer stated that INS had not received his application for permanent resident status and reminded him to file the application. The mailer was returned to INS as undelivered with a U.S. Postal Service note that the address

forwarding time had expired. There is no indication that INS then updated the applicant's address or undertook any other action to contact the applicant.

Based upon the foregoing evidence that INS failed to update the applicant's address in its record system, it is likely that the applicant did not receive any mailers from INS regarding the filing of his Form I-698. Had the applicant received a mailer for late filing as discussed in the above Federal Register notice, he and/or his mother would have been informed that INS had not received his Form I-698, and he would have had the opportunity to late file a Form I-698. Therefore, the AAO finds that in this particular case, the failure of the legalization office to update the applicant's address was likely detrimental to his ability to properly file a Form I-698.

Due to INS error, the AAO does not find that the application for adjustment of status should rightfully be considered untimely. The AAO, therefore, withdraws the termination of the applicant's temporary resident status. The AAO suggests that the director reopen the applicant's adjustment of status application for adjudication on its merits.

ORDER: The appeal is sustained.