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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, D.C. 20529-2090



U.S. Citizenship  
and Immigration  
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FILE: [REDACTED]  
XHU 88 156 01099

Office: HOUSTON

Date: **NOV 02 2009**

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Temporary Resident Status under 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.

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Houston, Texas, terminated the applicant's temporary resident status and that action is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant was granted temporary resident status on June 3, 1993. Although he filed an Application to Adjust Status from Temporary to Permanent Resident, Form I-698, within the following 43 months, such application was denied on July 19, 2007.<sup>1</sup> The applicant did not file a timely appeal of the denial and it became final.

On July 19, 2007, the director also issued a Notice of Intent to Terminate, which was sent to the applicant's address of record. The notice advised the applicant of his failure to appear for his interview on December 6, 2006, and that his temporary resident status would be terminated unless sufficient evidence was presented to establish that his Form I-698 had not been denied and/or that the decision to deny the Form I-698 was denied in error.

In terminating the applicant's temporary resident status, the director noted that no response had been received in rebuttal to the Notice of Intent to Terminate. Accordingly, on October 19, 2007, the director terminated the applicant's temporary resident status.

The regulation at 8 C.F.R. § 245a.2(u)(1) states that the status of an alien lawfully admitted for temporary residence under section 245A(a)(i) of the Immigration and Nationality Act (the Act) may be terminated at any time in accordance with section 245A(b)(2) of the Act.

On appeal, counsel asserts that the applicant did not receive either the notice of November 15, 2006 advising him to appear for his scheduled interview on December 6, 2006, or the Notice of Intent to Terminate.

Counsel's assertion is without merit. The notices were sent to the exact address listed by the applicant on his Case Status Inquiry Request Form dated April 12, 2006. The applicant maintains the same address on appeal. The record does not contain any evidence indicating that the notices were returned by the United States Post Office as undeliverable. The record clearly establishes that the notices were properly served on the applicant by sending them to his last known address in compliance with 8 C.F.R. § 103.5a(a)(1). As such, the applicant's alleged failure to receive the notices must be considered to be of his own making. The director's decision shall not be disturbed.

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

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<sup>1</sup>At his adjustment interview on April 12, 2006, the applicant failed to demonstrate a minimal understanding of English and minimal knowledge of United States history and government. On November 15, 2006, a notice was sent to the applicant advising him to appear for a second interview on December 6, 2006; however, the applicant failed to appear.