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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W. MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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Services

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FILE:



Office: NEBRASKA SERVICE CENTER

Date: JUL 01 2011

IN RE:

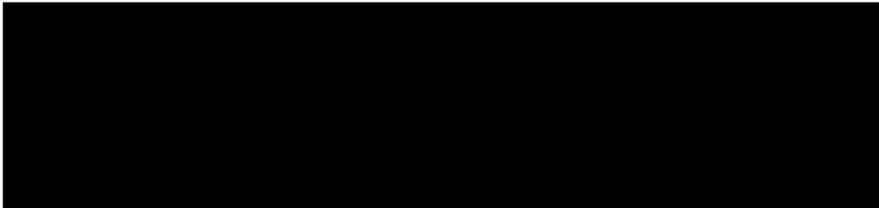
Applicant:



APPLICATION:

Application for Adjustment from Temporary to Permanent 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. 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.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application for adjustment from temporary to permanent resident status was denied by the director of the Nebraska Service Center. The Administrative Appeals Office (AAO) originally remanded the case to the director. The AAO *sua sponte* reopens the proceeding and withdraws its decision dated May 1, 1998.¹ The appeal will be dismissed.

On September 21, 1994, the director denied the I-698 application because the applicant had not filed for adjustment from temporary to permanent resident status within 43 months from the date of approval of his temporary residence application. *See* Section 245A(b)(1)(A) of the Immigration and Nationality Act (Act), 8 U.S.C. § 1255a(b)(1)(A). On May 1, 1998, the AAO remanded the case to the director, to incorporate documentation into the record showing the date of the applicant's adjustment to temporary resident status. Because the record reveals the date when the applicant was granted temporary resident status, the AAO *sua sponte* reopens the proceeding and withdraws its decision dated May 1, 1998.²

The applicant was granted temporary resident status on September 30, 1988. The 43-month eligibility period for filing for adjustment to permanent resident status expired on April 30, 1992. The record shows that the I-698 application was received by the Immigration and Nationality Service (INS), the predecessor of the United States Citizenship and Immigration Services (USCIS), along with the proper fee, on January 10, 1994. On September 21, 1994, the director denied the untimely I-698 application.

On appeal, the applicant asserts that, although he received his temporary resident card on September 30, 1988, it was not until December 1993 that he determined that he was required to file an I-698 application within 43 months from the date of approval of his temporary residence application. The applicant asserts that he has timely provided notice of any changes of address.

The AAO notes that the INS and private voluntary organizations widely publicized the requirement of applying for adjustment of status to permanent residence within the requisite period. The 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*

¹ The AAO may *sua sponte* reopen any proceeding conducted by the AAO under 8 C.F.R. § 245a and reconsider any decision rendered in such proceeding. 8 C.F.R. § 103.5(b).

² The AAO also notes that its previous decision incorrectly characterized the applicant's appeal as relating to the I-687 application, instead of the I-698 application.

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 on February 3, 1991, the director sent a mailer to the applicant at his last known address at [REDACTED] in Fort Wayne, Indiana. 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 in the record that the applicant updated his address with the INS until October 1992.³ The burden is on the applicant to give notice of any change of address within 10 days from the date of such change. 8 U.S.C. § 1305. Therefore it appears that the reason the applicant did not receive the mailer from the INS reminding him to file the I-698 application is because he failed to give timely notice of his change of address.

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 of proceedings does not contain any evidence that the applicant did, in fact, file an I-698 application within the required period of time, therefore, the application was properly denied by the director on this ground.

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

³ In the Form I-697, Notice of Change of Address Card for Legalization, filed in October 1992, the applicant lists his current address in Los Angeles, and his previous address on [REDACTED]