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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



U.S. Citizenship
and Immigration
Services

L1



DATE: **FEB 09 2012**

Office: TEXAS SERVICE CENTER

FILE:



IN RE: Applicant:



APPLICATION: Application for Adjustment from Temporary to Permanent Resident Status 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. 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 resident status to permanent resident status was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the applicant's application to adjust from temporary to permanent resident status because the applicant failed to file the Form I-698 Application to Adjust from Temporary to Permanent Resident Status within the 43-month application period.

On appeal, the applicant asserts that he was unaware of the requirement to file the Form I-698 application.

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 filed a Form I-687 Application for Temporary Resident Status on May 4, 1988. The application was initially denied on January 10, 1989 and the applicant filed a motion to reopen. On March 11, 1989, the application was reopened on Service motion. The application was subsequently approved on May 3, 1989.

The 43-month eligibility period for filing for adjustment expired on December 2, 1992. While the applicant, through counsel, asserts on appeal that he was unaware of the requirement to file the Form I-698 within the requisite 43 month period, the record contains a Form I-698 completed and signed by the applicant and submitted on November 17, 1993, more than six months after the filing period expired. Thus, the applicant failed to file his Form I-698 within the requisite period.

The AAO notes that the second Form I-698, filed on June 17, 2010 was correctly denied by the director, however, United States Citizenship and Immigration Service (USCIS) records do not indicate that the applicant's temporary resident status was terminated.

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 burden to file the adjustment application in a timely manner remains with the applicant. *See* 8 C.F.R. § 245a.3(d). The record indicates that the applicant failed to file the adjustment application within the requisite period, therefore, the appeal will be dismissed. Any temporary resident status previously granted is hereby terminated.

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