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U.S. Citizenship
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FEB 22 2007

FILE: [REDACTED]
EAC 99 168 50174

Office: VERMONT SERVICE CENTER

Date:

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. 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.

A handwritten signature in black ink, appearing to read "Robert 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 on appeal. The appeal will be dismissed.

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 claims that he filed a timely Form I-698, Application for Adjustment of Status from Temporary to Permanent Resident, in 1989, but never received any correspondence from the Immigration and Naturalization Service (INS), now Citizenship and Immigration Services, regarding his case.

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 applicant was granted temporary resident status on December 6, 1988. The 43-month eligibility period for filing for adjustment expired on July 6, 1992. The applicant's Form I-698 was not received by the Immigration and Naturalization Service (INS), now Citizenship and Immigration Services (CIS), until January 21, 1998. The director therefore denied the application and terminated the applicant's temporary resident status.

On appeal, the applicant claims that he filed a timely Form I-698 in 1989, but never received any correspondence from INS regarding the application despite numerous inquiries at the local INS office. The applicant states that he was finally told, after three to four years of inquiries, that he needed to supply proof that he filed a timely Form I-698. The applicant explains that he mailed a copy of the Form I-698 he purportedly mailed to INS in 1989 to the Vermont Service Center, but he was requested to provide additional documentation, such as a fee receipt or cancelled money order, to prove that the application was actually received and fee receipted by INS in 1989. He indicates that he was unable to obtain copies of the fee receipt or canceled money order "after such a long time," so he finally filed a second Form I-698 in November of 1997 at the advice of the local INS office. The applicant submits a copy of a letter of inquiry dated October 15, 1996; a copy of the first page of a Form I-698 with an adhesive mailing label attached; a photocopy of his temporary resident card; and, a photocopy of a money order in the amount of \$120 issued in November 1997.

The applicant has not submitted a photocopy of an INS fee receipt or a canceled money order to establish that the Form I-698 he submitted on appeal was actually received or fee receipted in 1989. There is no indication in the administrative record or in CIS computer records that the applicant successfully filed a Form I-698 in 1989.

The record of proceeding does contain a record of inquiry dated September 22, 1997, with a notation indicating that the applicant "would like to know what is needed for [him] to be [an] LPR at this point." This notation appears to indicate that the applicant was asking what he needed to do to obtain lawful permanent resident status as of that date, not that he was making an inquiry regarding the status of a previously filed adjustment application. In view of the foregoing, the applicant's claim that he filed a Form I-698 during the 43-month application period is not persuasive.

The applicant's statements on appeal have been considered. Nevertheless, there is no waiver, even for humanitarian reasons, for failure to file the Form I-698 within the 43-month application period. As the applicant has not overcome the basis for termination of status, the appeal must be dismissed.

The applicant is ineligible for temporary residence for the above stated reasons, with each considered as an independent and alternative basis for denial.

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