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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

FILE: [redacted] OFFICE: California Service Center DATE: AUG - 5 2003

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

PUBLIC COPY

INSTRUCTIONS: Attached is the decision rendered on your appeal. The file has been returned to the Service Center that processed your case. If your appeal was sustained, or if your case was remanded for further action, the Service Center will contact you. 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.

Dennis M. Kuhn for

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The termination of the applicant's temporary resident status by the Director, California 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 asserted that he has resided in the U.S. for 26 years and that being compelled to return to his native Mexico would be a hardship for his wife and seven children, all of whom are dependent on his income for their support.

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 (43) months of the date he/she was granted status as a temporary resident. 8 C.F.R. § 245a.2(u)(1)(iv).

The applicant was granted temporary resident status on October 28, 1988. The 43-month eligibility period for filing for adjustment expired on May 28, 1992. In her Notice of Termination, the acting director noted that the Application for Adjustment of Status from Temporary to Permanent Resident (Form I-698) was filed on January 12, 2000. However, an examination of that document discloses a receipt date-stamp of April 19, 1993. Nevertheless, even if the earlier filing date is used, the adjustment application would still have been submitted subsequent to the expiration of the forty-three month application period. The I-698 adjustment application was, therefore, not filed in a timely manner, and the applicant's temporary resident status was terminated by the director.

The applicant, on appeal, stated that during a visit to his local Bureau office, he was incorrectly informed that he simply needed to wait for further notification by mail without undertaking any additional action. The applicant's contention that he was misinformed can be neither confirmed nor rebutted from the record. However, field offices did undertake efforts to display general information about adjustment of status procedures for amnesty applicants under sections 210 and 245A of the Act. Furthermore, the Service and private voluntary organizations widely publicized the procedures of the legalization program, including the necessity of applying for adjustment to permanent residence within the requisite period. The burden to file the application for adjustment of status in a timely manner remains with the applicant. See 8 C.F.R. 245a.3(d).

The applicant's statements made on appeal have been considered. Nevertheless, there is no waiver available, even for humanitarian reasons, of the requirements stated above. As the applicant has not overcome the grounds for termination of status, the appeal must be dismissed.

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