



U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE: [Redacted]
XPS 92 028 0653

Office: TEXAS SERVICE CENTER Date: JUL 13 2007

IN RE: Applicant: [Redacted]

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:
[Redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has 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 denial of permanent resident status by the Director, Texas Service Center, is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded for further action and consideration.

The applicant submitted two Form I-698 Applications to Adjust Status from Temporary to Permanent Resident on October 29, 1991 and on September 15, 1995, respectively. The applicant apparently filed the second application because she had not received a response regarding the first application. The applicant was issued a denial by the Acting Director, Miami District Office, on November 12, 1996, based on the determination that the Form I-698 was untimely filed. This notice failed to identify which of the two applications was being denied, and was headed "Notice of Intent to Deny." The applicant appealed this decision to the AAO. A second denial was issued on the same basis by the Director, Texas Service Center, on November 15, 2005, specifically with respect to the second Form I-698 application.

A denial of the first Form I-698 was issued by the Director, Texas Service Center on November 17, 2005, based on the determination that the applicant had not demonstrated that she had continuously resided in the United States for the statutory period and that she had not submitted evidence showing she is satisfactorily pursuing a course of study recognized by the Attorney General to achieve an understanding of English and History/Government of the United States. As a result of denying the Form I-698, the director terminated the Form I-687 application.

On appeal, the applicant explained that she originally filed for adjustment of status in 1991 and sent multiple letters inquiring about her application, but the Immigration and Naturalization Service (INS) failed to schedule her for an appointment.

The issues on appeal are whether the first I-698 was timely filed, whether proper notice of the decisions were provided to the applicant and her attorney of record, and whether the applicant was interviewed as required by 8 C.F.R. § 245a.3(e).

An applicant is eligible to apply for adjustment of status from temporary to permanent resident if she applies for such adjustment anytime subsequent to the granting of temporary resident status but on or before the end of 43 months from the date of actual approval of the temporary resident application. 8 C.F.R. § 245a.3(b)(1).

Whenever a person is required by any of the provisions of this chapter to be given notice, such notice shall be given to the attorney or representative of record, or the person himself if unrepresented. 8 C.F.R. § 292.5(a).

The applicant for adjustment from temporary to permanent resident status shall be notified in writing of the decision, and, if the application is denied, the reason therefore. 8 C.F.R. § 245a.3(i).

Each applicant for adjustment from temporary to permanent resident status shall be interviewed by an immigration officer, except for instances related to age and health, in which it may be waived. 8 C.F.R. § 245a.3(e).

An applicant is eligible to apply for adjustment from temporary to permanent resident status if she can demonstrate she meets the requirements of the Immigration and Nationality Act, as amended, relating to minimal understanding of ordinary English and a knowledge and understanding of the history and government of the United States; or is satisfactorily pursuing a recognized course of study. 8 C.F.R. § 245a.3(b)(4)(i). Literacy and basic citizenship skills may be demonstrated for these purposes by speaking and understanding English during the course of the interview for permanent resident status or by passing specified standardized tests. 8 C.F.R. § 245a.3(b)(4)(iii)(A).

An applicant who fails to pass the English literacy and/or the U.S. history and government tests at the time of the interview shall be afforded a second opportunity after six months (or earlier, at the request of the applicant) to pass the tests, submit evidence of passing an approved examination or submit evidence of any one of the alternatives listed at 8 C.F.R. § 245a.1(s). 8 C.F.R. § 245a.3(b)(4)(iii)(B).

The record shows that the applicant's Form I-687 Application for Status as a Temporary Resident was approved on December 6, 1988. The applicant submitted her first Form I-698 on October 29, 1991, or 34 months and 23 days later. As it was filed within 43 months of the Form I-687 approval, the first Form I-698 is found to be timely filed.

The record fails to show that the notices of denial of the Forms I-698 were ever sent to the attorney of record. Specifically, no notices were sent to attorney [REDACTED] until the final Notice of Termination of the Form I-687 application. This included the Notice of Intent to Deny issued on November 12, 1996; Request for Additional Evidence issued on August 16, 2005; and the Notice of Decision issued on November 17, 2005. The Notice of Termination was sent to the attorney's address that appeared on her Form G-28 submitted October 1, 1996. Consultation with the website of the Florida State Bar Association now provides a different address for [REDACTED] that is [REDACTED] Miami Lakes, Florida 33014-2169. The Florida Bar, *Member Search*, <http://www.floridabar.org/names.nsf/MESearch?OpenForm> (last update June 28, 2007). The record also fails to show that the notices of denial of the Forms I-698 were ever sent to the applicant at her address of record, which appears to have been the address listed on her second Form I-698 as her mailing address [REDACTED] Miami, FL 33166. As a result, it is determined that proper notice of the decision was not provided to the applicant or her attorney as required by 8 C.F.R. § 292.5(a).

Lastly, the record fails to show that the applicant was ever interviewed by an immigration officer in relation to either of her Form I-698 applications, as required by 8 C.F.R. § 245a.3(e). No reference is made in the denial letters to any attempt to interview the applicant, and no explanation is provided for the lack of record of an interview. The lack of evidence that the applicant was ever interviewed is particularly significant because the I-698 application was ultimately denied, in part, due to the applicant's failure to provide evidence of literacy and basic citizenship skills. Specifically, the

director found the applicant failed to show she is satisfactorily pursuing a course of study recognized by the Attorney General to achieve an understanding of English and History/Government of the United States. The applicant could have demonstrated the necessary literacy and basic citizenship skills in the interview, according to 8 C.F.R. § 245a.3(b)(4)(iii)(A)(1).

Since the record does not reflect that the applicant was given an interview, it also is noted that she was not given a second opportunity to pass the language test and the history and government test six months after the interview, as required by 8 C.F.R. § 245a.3(b)(4)(iii)(B).

It is concluded that the applicant did not receive proper notice of the denial of her applications and did not receive an interview as required by 8 C.F.R. § 245a.3(e). Accordingly, the denial of permanent residence is withdrawn and the case is remanded for compliance with the requirements for notification of the applicant and of counsel, scheduling of an interview for permanent resident status, provision of a second opportunity to pass required tests, and completion of the adjudication of the application for permanent residence in accordance with the foregoing. If the new decision is adverse, it shall be certified to this office.

ORDER: This matter is remanded for further action and consideration pursuant to the above.