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



U.S. Citizenship
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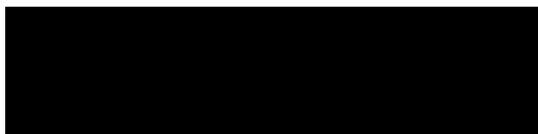
Date: JUL 25 2011 Office: SAN DIEGO

IN RE: Applicant:



APPLICATION: Application to Adjust Status 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. 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.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application to adjust to permanent resident status pursuant to section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a, was denied by the director of the San Diego Field Office and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant was granted temporary resident status on January 30, 2006, under section 245A of the Immigration and Nationality Act (Act), as amended, 8 U.S.C. § 1255a. The applicant was required to file an application to adjust status from temporary to permanent resident within forty-three (43) months of receiving his temporary resident status, which would have been August 30, 2009. *See* 8 C.F.R. § 245a.3(b)(1). Pursuant to section 245A(b)(2)(C) of the Act, 8 U.S.C. § 1255a(b)(2)(C), a failure to file an application for adjustment to permanent residence within this statutory filing period will result in the termination of the applicant's temporary residence. The applicant filed his application to adjust status from temporary to permanent resident on February 19, 2010,¹ which falls after the 43-month statutory filing period.

On appeal, through counsel, the applicant asserts that the applicant was not proficient in English when he received a written notice of the statutory deadline to file within 43 months of approval of his temporary residence application. Counsel further asserts that the applicant did not have counsel to advise him of the 43-month period filing period until after it expired.

Third, counsel asserts that the regulation at 8 C.F.R. § 245a.3(a)(2) provides that USCIS may not deny an application simply due to failure to timely apply. The above-referenced regulation reads as follows: "No application shall be denied for failure to timely apply *before* the end of 43 months from the date of actual approval of the temporary resident application." (Italics added for emphasis.) In other words, the temporary resident's application for permanent resident status shall not be denied for being untimely if it is filed before the end of 43 months from the date of approval of the temporary resident status application. In the instant case, the applicant's Form I-687 application for temporary resident status was approved on January 30, 2006. The applicant filed his Form I-698 application for adjustment from temporary to permanent resident status on February 19, 2010. The period beginning January 30, 2006 and ending on February 19, 2010 spans slightly more than 48 months.

Finally, counsel asserts that the notice of approval of the Form I-687 application for temporary resident status has a validity period of 48 months. The AAO notes that the applicant's approval notice/travel authorization states: "STATUS OF ADMISSION: TW1 Valid from: 1/30/2006 to: 01/29/2010." The AAO notes that the agency created a hybrid notice, which includes a notice of approval of the application for temporary residence and travel authorization. It is clear from the body of the text in the notice that the applicant must file for permanent resident status within 43 months of approval of his application for temporary resident status.

¹ The applicant attempted to file his Form I-698 on January 8, 2010, but it was rejected on January 21, 2010 because the filing fee was either incorrect or had not been provided to USCIS.

Accordingly, the appeal shall be dismissed.

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