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U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: FEB 09 2009
WAC 96 090 51544

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:
[REDACTED]

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 if your case was remanded for further action, you will be contacted.

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom, Acting Chief
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 (AAO) on appeal. The appeal will be dismissed.

The applicant was granted temporary resident status on January 22, 1988 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. *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 7, 1996, which is outside the statutory filing period.

The director initially issued a Notice of Termination on May 3, 2007. Upon review, on August 6, 2007, the director reopened the Form I-698 Application to Adjust Status from Temporary to Permanent Resident and issued a Notice of Intent to Terminate. On June 16, 2008 the director issued the current Notice of Termination, finding that as the applicant untimely filed for permanent residence, the Form I-698 must be denied and the applicant's temporary status terminated. The applicant timely appealed.

On appeal, the applicant states that due to personal reasons, he failed to timely file the Form I-698 application, which delay was further compounded when a *notario* took his money and failed to file the Form I-698. Counsel requests that the termination be rescinded as a matter of discretion due to the unfortunate circumstances which led to the applicant's failure to timely file.

As stated in 8 C.F.R. § 103.3(a)(3)(iv), any appeal which is filed solely on the basis of a denial for failure to file the application for adjustment of status under section 210 or 245A in a timely manner, will be summarily dismissed. Neither the statute nor the regulation allows for a discretionary exception to this rule.

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