

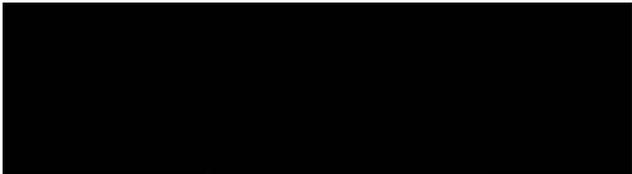
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U.S. Department of Homeland Security  
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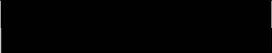
U.S. Citizenship  
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Services

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FILE:



Office: NATIONAL BENEFITS CENTER

Date:

**MAR 11 2009**

MSC-08-311-10253

IN RE:

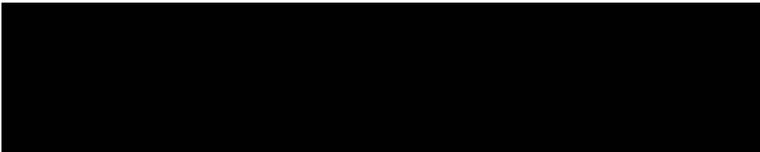
Applicant:



APPLICATION:

Application for Adjustment from Temporary to Permanent Resident Status under 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. 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 remanded for further action, you will be contacted.

John F. Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The application for adjustment from temporary to permanent resident status was denied by the Director, National Benefits Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director denied the application for adjustment from temporary to permanent resident status because the applicant was not previously granted temporary resident status under section 245A of the Immigration and Nationality Act (Act).

On appeal, counsel asserts that the applicant is eligible for adjustment of status. The entire record was reviewed and considered in rendering a decision on the appeal.

Any alien who has been lawfully admitted for temporary resident status under section 245A(a) of the Act, such status not having been terminated, may apply for adjustment of status of that of an alien lawfully admitted for permanent residence. 8 C.F.R. § 245a.3(b).

The record reflects that on May 20, 2003, the applicant filed a Form I-817, Application for Family Unity Benefits, as the spouse of an alien who is eligible for adjustment pursuant to the Legal Immigration Family Equity (LIFE) Act. *See* 8 C.F.R. § 245a.31. On January 9, 2004, the applicant's application for family unity benefits was approved and she was granted voluntary departure for a period of one year. The applicant was also eligible to receive employment authorization for a period of one year. *See* 8 C.F.R. § 245a.34(c).

On August 4, 2008, the applicant filed a Form I-698, Application to Adjust Status From Temporary to Permanent Resident. On September 22, 2008, the director, National Benefits Center, denied this application because the applicant had not been granted temporary resident status under section 245A of the Act.

On appeal, counsel asserts that the applicant is a dependent of her husband who is the principal I-698 applicant. Counsel contends that the applicant qualifies for adjustment under the LIFE Act because she has an employment based petition filed and approved prior to January 14, 1998. Counsel further contends that it is inequitable to deny the applicant's adjustment of status since she did not receive employment authorization pursuant to the approval of her application for family unity benefits. Counsel maintains that to deprive the applicant the opportunity to adjust with her spouse does not serve the purpose behind the LIFE Act.

The AAO has considered counsel's assertions and finds that they do not overcome the basis for denial. Aliens who are eligible to adjust status from temporary to permanent resident must first be granted temporary residence under section 245A of the Act. 8 C.F.R. § 245a.3(b). Here, the applicant has not been granted temporary resident status under section 245A of the Act. Counsel does not contest this finding on appeal. As such, the applicant is ineligible for permanent resident status under section 245A of the Act.



Therefore, the AAO affirms the director's decision, and finds that the applicant has failed to establish her eligibility for permanent resident status under section 245A of the Act. Since the applicant has not overcome the basis for denial, the appeal must be dismissed.

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