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

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FILE:



Office: TEXAS SERVICE CENTER

Date:

MSC-08-004-11045

MAR 17 2009

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 denial of the applicant's permanent resident status by the Director, Texas Service Center, is before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the file returned to the director for further action and consideration.

The director determined that the applicant is ineligible to adjust status from temporary to permanent resident because his temporary residence was terminated.¹

On appeal, counsel asserts that the denial was in error because the applicant filed his adjustment of status application within the timeframe of his temporary resident status. Counsel contends that the applicant's approval notice states that he was granted temporary resident status until September 30, 2007. Counsel further contends that the applicant was prevented from seeking legal advice in regard to his immigration case because he was hospitalized.

The regulation at 8 C.F.R. § 245a.3(b) provides:

Any alien who has been lawfully admitted for temporary resident status under section 245A 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.

The director determined that pursuant to the above cited regulation, the applicant is no longer eligible to apply for permanent resident status because his temporary residence was terminated. On appeal, the applicant addressed the basis for the termination of his temporary resident status. However, the instant appeal is related to the denial of his application for permanent residence. The applicant has not addressed the denial of this application in his appeal. Therefore, the appeal must be dismissed.

The AAO finds, however, that the record reveals significant errors in the adjudication of this matter that warrants the director to *sua sponte* reopen the applicant's Form I-687, Application for Status as a Temporary Resident, for further action and consideration.²

The record reflects that the applicant was granted temporary resident status on October 1, 2003. On May 28, 2007, the applicant filed an initial Form I-698, Application to Adjust Status from Temporary to Permanent Resident. On August 14, 2007, the director determined that the applicant failed to file his permanent residence application within the 43-month application period. The director accordingly denied the applicant's permanent residence application, and terminated his temporary resident status. The director stated that there are no appeal rights attached to the decision to terminate the applicant's temporary resident status. The director's assertion fails to

¹ 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 resident within the 43-month application period. See 8 C.F.R. § 245a.2(u)(iv).

² The Regional Processing Facility director may reopen and reconsider any adverse decision *sua sponte*. 8 C.F.R. § 245a.3(k).

comply with the regulatory procedures for termination of temporary resident status. The regulation at 8 C.F.R. § 245a.2(u) provides in pertinent part:

If the alien's status is terminated, the director of the regional processing facility shall notify the alien of the decision and the reasons for the termination . . . The alien may appeal the decision to the Associate Commissioner, Examinations (Administrative Appeals Unit). Any appeal with the required fee shall be filed with the regional processing facility within thirty (30) days after the service of the notice of termination.

According to the above cited regulation, the applicant should have been informed of his right to file an appeal with the AAO within 30 days after service of the notice of termination. Therefore, the director's failure to inform the applicant of his right to appeal the termination was in error.

The AAO further finds that the record reflects additional errors in the adjudication of this matter that warrant action by the director. The applicant was granted temporary resident status on October 1, 2003 by the Texas Service Center, without a Field Office or District Office interview. According to 8 C.F.R. § 245a.2(j), each applicant for temporary resident status shall be interviewed by an immigration officer, except that the interview may be waived for a child under 14, or when it is impractical because of the health or advanced age of the applicant. The applicant in this case is neither under 14 nor of advanced age. Additionally, the applicant has not shown that an interview would be impractical because of health concerns.

Based on the foregoing, the AAO suggests that the director reopen the matter *sua sponte*, withdraw the termination of the applicant's temporary resident status and forward his record to the local field office with jurisdiction over this matter. The AAO suggests that the applicant should be interviewed at the field office to assess his eligibility for temporary resident status. The director should then, pursuant to 8 C.F.R. § 245a.2(u), issue the applicant a notice of intent to terminate, based on the late filing of his permanent residence application, and any other findings the director has made regarding the sufficiency of the applicant's evidence. If the director terminates the applicant's temporary resident status, the applicant shall be notified of his right to appeal the termination to the AAO. The AAO notes that the applicant's permanent residence application may be reopened by the director *sua sponte* if the applicant overcomes the basis of the termination.

ORDER: The appeal is dismissed and the file returned to the director for further action and consideration pursuant to the above.