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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529 - 2090



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

Office: TEXAS SERVICE CENTER

Date: **AUG 04 2010**

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 remanded for further action, you will be contacted.

Perry Rhew
Chief, Administrative Appeals Office

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DISCUSSION: The termination of the applicant's temporary resident status by the director of the Texas Service Center is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

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 residence within the 43-month application period. The AAO notes that the director erroneously stated that the applicant did not file a rebuttal to the director's notice of intent to terminate (NOIT) the applicant's temporary resident status. The record reflects that the applicant filed a timely rebuttal to the NOIT. However, the director's error is harmless because the AAO conducts a *de novo* review, evaluating the sufficiency of the evidence in the record according to its probative value and credibility as required by the regulation at 8 C.F.R. § 245a.2(d)(6).¹

On appeal, and in his rebuttal to the NOIT, the applicant admits that he did not timely file a Form I-698, application to adjust status from temporary to permanent resident, because he made a mistake regarding the date by which he had to file. In his rebuttal to the NOIT, the applicant enclosed a Form I-698 application, which was accepted for filing and is pending.

The status of an alien lawfully admitted for temporary residence under section 245A(a)(1) of the Act may be terminated at any time if the alien fails to file for adjustment of status from temporary to permanent resident on Form I-698 within forty-three months of the date he/she was granted status as a temporary resident under § 245a.1 of this part. 8 C.F.R. § 245a.2(u)(1)(iv).

The applicant was granted temporary resident status on May 18, 2003. The 43-month eligibility period for filing for adjustment expired on December 18, 2006. The Form I-698, application to adjust status from temporary to permanent resident, was filed on July 17, 2007. Therefore the I-698 application was untimely.

As the applicant has not overcome the grounds for termination of temporary resident status, the appeal must be dismissed.

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

¹ The AAO conducts appellate review on a *de novo* basis. The AAO's *de novo* authority is well recognized by the federal courts. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

