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



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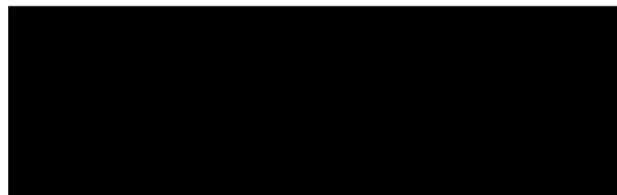
Applicant:



APPLICATION:

Application for Adjustment 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. 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

DISCUSSION: The application for adjustment from temporary resident status to permanent resident status was denied by the Director, National Benefits Center, and is now before the Administrative Appeals Office (AAO) 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.

On appeal, the applicant states that she has been continually renewing her temporary resident status annually and she was not notified of the need to apply for adjustment to permanent resident status within the required time period.

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 March 5, 1988. The 43-month eligibility period for filing for adjustment expired on October 5, 1991. However, the applicant indicates that she was permitted to extend her temporary resident status past the 43 month deadline. The Form I-698 was not received by United States Citizenship and Immigration Services (USCIS) until April 21, 1995, 83 months past the period of eligibility for filing.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 81 F.3d 143, 145 (3d Cir. 2004). Following *de novo* review, the AAO finds that the applicant was issued a Notice of Intent to Deny (NOID) on October 18, 1996 which indicated that her temporary resident status would be denied because she failed to file the Form I-698 within the required 43 month period. However, the NOID erroneously instructed the applicant that she should file an appeal of this decision with the Administrative Appeals Office. The applicant's temporary resident status was never properly terminated and a final decision on the Form I-698 was not issued until March 1, 2010. In the Notice of Denial of the Form I-698, the director indicated that the applicant failed to file the Form I-698 within the required 43 month period.

As noted previously, the AAO conducts *de novo* review. Following *de novo* review, the AAO finds that while a final decision on the applicant's Form I-698 was not issued until March 2010, the record clearly indicates that the applicant failed to file her Form I-698 within the required period. The legacy Immigration and Naturalization Service (INS) and private voluntary organizations widely publicized the requirement of applying for adjustment to permanent residence within the requisite period. Furthermore, the original eligibility period of 31 months was extended to 43 months to better enable applicants to file timely applications. The burden to file the adjustment application in a timely manner remains with the applicant. *See* 8 C.F.R. § 245a.3(d).

Therefore, the AAO agrees with the director that the Form I-698 was properly denied for failure to file within the required 43 months.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility. The director shall continue adjudication of the applicant's temporary resident status in accordance with this decision.