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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W. MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



L1

Date: OCT 06 2011

Office: SAN ANTONIO

FILE:

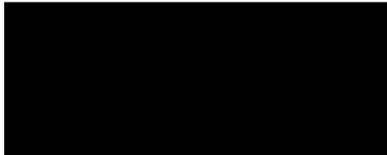


IN RE: Applicant:



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:



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 termination of the applicant's temporary resident status by the director of the San Antonio office 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 Form I-698, application for adjustment of status from temporary to permanent residence, within the 43-month application period.

On appeal, the applicant states that he did not file an I-698 application, because he was unable to walk or move in any way during the period of February 17, 2010 through June 11, 2010. He has submitted his own statement and medical records which show that he had knee surgery in July 2009. The records show that the applicant returned to work full time until his second knee surgery and hospitalization from February 17 to February 20, 2010. In addition, the records reveal an outpatient hospital visit on March 3, 2010, and numerous, bi-weekly, outpatient physical therapy sessions at a rehabilitation center from April 7 until May 21, 2010. The applicant states that on July 14, 2010, when went to his attorney's office to inquire on the renewal of his Form I-765, employment authorization document, that, "my case was reviewed and it was determined that I was late to file this I-698." The applicant has also enclosed a Form I-698 application, signed by him on July 14, 2010, and a request for a fee waiver.<sup>1</sup>

The AAO has considered the applicant's assertions, reviewed all of the evidence, and has made a *de novo* decision based on the record and the AAO's assessment of the credibility, relevance and probative value of the evidence.<sup>2</sup>

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 September 7, 2006. The 43-month eligibility period for filing for adjustment expired on April 6, 2010. The approval notice clearly states the requirement to file the I-698 application during the 43-month eligibility period. The record reflects that on September 7, 2006, the approval notice was mailed to the applicant at his address of record, and to counsel of record. The evidence of record does not reflect that either approval notice was returned by the postal service. The applicant failed to file the I-698 application. The additional evidence that the applicant has submitted on appeal, while being

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<sup>1</sup> Although the applicant has submitted this additional evidence on appeal, he did not file a rebuttal to the notice of intent to terminate (NOIT) his temporary resident status, mailed to him at his address of record, and to counsel on July 27, 2010.

<sup>2</sup> 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).

evidence in support of his physical limitations during the period of February 17, 2010 through May 21, 2010, does not support a finding that the applicant was unable to file the I-698 application prior to February 17, 2010.

The burden to file the adjustment application in a timely manner remains with the applicant. *See* 8 C.F.R. § 245a.3(d). The record of proceedings does not contain any evidence that the applicant did, in fact, file an I-698 application within the required period of time, therefore, the application was properly denied by the director on this ground. 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*.