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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**



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Date: JAN 06 2012 Office: SOUTHERN SERVICE CENTER

FILE:

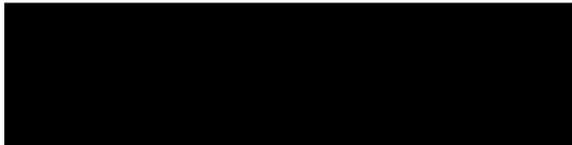


IN RE: Applicant:



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. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The director of the Southern Service Center denied the application for adjustment from temporary to permanent resident status and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The AAO reopens the matter sua sponte to consider evidence not previously in the record. The decisions of the director and chief of the AAO will be withdrawn and the matter remanded to the director for further action and adjudication of Form I-698.

The director denied the adjustment application, finding the applicant's temporary resident status had been terminated, and the applicant was therefore not eligible for adjustment to permanent resident status. The director terminated the applicant's temporary resident status because the applicant failed to file Form I-698 within the statutory 43-month filing period.

On appeal, counsel states that neither the applicant nor her previous attorney of record knew that the USCIS (United States Citizenship and Immigration Services) had granted temporary resident status to the applicant. Counsel also states that neither he nor the applicant received the notice of termination (NOT).

An alien whose temporary resident status has been terminated under 8 C.F.R. § 245a.2(u) is ineligible for adjustment from temporary to permanent resident status. 8 C.F.R. § 245a.3(c)(5).

In review, the applicant's temporary resident status was granted on April 13, 2005. The applicant claims that she never received approval of her temporary residence status and therefore, was not obliged to file the Form I-698. On her Form I-687 application, the applicant claims to reside at [REDACTED]. However, the applicant's Form I-797, Notice of Action stating that her temporary resident status was approved was mailed to [REDACTED] and the record does not show that a Form I-688, temporary resident card was ever issued. Absent such knowledge, the AAO finds that the applicant's temporary resident status should not have been terminated for the applicant's failure to timely apply for permanent resident status. Therefore, the case will be remanded for the director to continue adjudication of the Form I-698.

ORDER: The director's decision of March 11, 2010 and the AAO's decision of October 14, 2010 are withdrawn. The matter is remanded for further action and consideration consistent with the above discussion and entry of a new decision.