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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
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FILE: 

Office: SAN ANTONIO

Date: **SEP 07 2010**

IN RE: 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. 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 application for adjustment from temporary to permanent resident status was denied by the Director, San Antonio, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. This matter will be remanded for further action and consideration.

The director denied the adjustment application based upon the conclusion that the applicant had failed to submit sufficient evidence of residence in the period from prior to January 1, 1982 to May 4, 1988 as required under 8 C.F.R. § 245a.2.

On appeal, the applicant asserts that she had already been granted temporary residence by an officer of United States Citizenship and Immigration Services or USCIS (formerly the Immigration and Naturalization Service or the Service) who had reviewed her evidence of residence and found such evidence to be sufficient to establish her eligibility.

An applicant for temporary resident status must establish entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status since such date and through the date the application is filed. Section 245A(a)(2) of the Act, 8 U.S.C. § 1255a(a)(2) and *see* 8 C.F.R. § 245a.2(b)(1).

Any alien who has been lawfully admitted for temporary resident status under section 245A(a) of the Act, such status not having been terminated, may apply for adjustment of status if the alien establishes continuous residence in the United States since the date the alien was granted such temporary residence status. *See* 8 C.F.R. § 245a.3(b).

An alien shall be regarded as having resided continuously in the United States for the purpose of this part if, at the time of applying for adjustment from temporary to permanent resident status, or as of the date of eligibility for permanent residence, whichever is later, no single absence from the United States has exceeded thirty (30) days, and the aggregate of all absences has not exceeded ninety (90) days between the date of approval of the temporary resident application, Form I-687, and the date the alien applied or became eligible for permanent resident status, whichever is later, unless the alien can establish that due to emergent reasons or circumstances beyond his control, the return to the United States could not be accomplished within the time period(s) allowed. A single absence from the United States of more than 30 days, and aggregate absences of more than 90 days during the period for which continuous residence is required for adjustment to permanent residence, shall break the continuity of such residence, unless the temporary resident can establish to the satisfaction of the district director or the Director of the Regional Processing Facility, that he or she did not, in fact, abandon his or her residence in the United States during such period. 8 C.F.R. § 245a.3(b)(2).

The record shows that the applicant filed a Form I-687, Application for Temporary Resident Status Pursuant to Section 245A of the Act, on June 7, 2005. The record further shows that the applicant was granted temporary residence on November 6, 2006. The applicant subsequently filed the Form I-698, Application to Adjust Status from Temporary to Permanent Resident Status, on October 16, 2009.

On March 24, 2010, the director issued a notice of decision denying the Form I-698 application based upon the finding that the applicant had failed to submit sufficient evidence of residence in the United States from prior to January 1, 1982 to May 4, 1988 as required under 8 C.F.R. § 245a.2. However, the regulation cited by the director relates to applicants for adjustment to temporary residence under section 245A of the Act and requires that such applicants establish continuous residence in this country from prior to January 1, 1982 to May 4, 1988. Applicants for adjustment from temporary residence to permanent residence under section 245A of the Act need only establish continuous residence in the United States from the date an applicant was granted temporary resident status to the date the applicant submitted the Form I-698 adjustment application as set forth in and required by 8 C.F.R. § 245a.3(b)(2). Consequently, the director's decision denying the Form I-698 adjustment application shall be withdrawn.

It is noted that the regulation at 8 C.F.R. § 245a.2(u)(1)(i) states that the status of an alien granted temporary residence may be terminated at any time if it determined that the alien was ineligible for temporary residence under section 245A of the Act. If it is determined that the record does not contain sufficient evidence to support the applicant's claim of continuous residence in that period from prior to January 1, 1982 to May 4, 1988, the regulations at 8 C.F.R. § 245a.2(u) specify the conditions to be met and procedures to be followed in terminating the applicant's status as a temporary resident.

The case will be remanded for the purpose of continuing the adjudication of the applicant's Form I-698 adjustment application.¹ Any new decision, if adverse, shall be certified to this office for review.

ORDER: This matter is remanded for further action and consideration pursuant to the above.

¹ Although the applicant has presented evidence to establish her compliance with the English language component of the basic citizenship skills requirement set forth in 8 C.F.R. § 245a.3(b), it must be noted that a review of the record reveals no evidence to establish her satisfaction of the United States history and government component of this basic citizenship skills requirement.