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U.S. Citizenship
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Services

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[REDACTED]

FILE:

[REDACTED]

Office: TEXAS SERVICE CENTER Date: JUL 02 2008

MSC-07-340-14134

IN RE:

Applicant:

[REDACTED]

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:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has 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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for adjustment from temporary to permanent resident status pursuant to section 245A of the Immigration and Nationality Act (Act) was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded.

The director denied the Form I-698 application for adjustment from temporary to permanent resident status on October 11, 2007 because the Form I-687 application for temporary resident status was terminated on September 22, 2007. The Form I-687 application was terminated because the director found that the applicant failed to establish that he had timely filed a Form I-698 application.

On appeal, counsel for the applicant asserts that the applicant was never informed of the requirement that he timely file a Form I-698 application until he received the Notice of Intent to Terminate (NOIT). She asserts that adjustment of status is a vested right and, as such, is subject to due process protection. Counsel states that the applicant was not given a process with which to apply for adjustment; he was not given the statutorily required time to apply for permanent residence; and the director failed to consider the applicant's response to the NOIT. Counsel asserts that these constitute fundamental procedural errors that warrant the tolling of the temporary residence period to allow the applicant to adjust. Counsel requests that the doctrine of equitable estoppel be applied to reinstate the applicant's temporary resident status, due to the director having erred in failing to allow the applicant an opportunity to timely submit his Form I-698 application. Lastly, counsel requests *nunc pro tunc* processing, to treat the Form I-698 submission as timely filed given the surrounding circumstances.

To be eligible for adjustment from temporary to permanent resident status, an applicant must apply for such adjustment anytime subsequent to the granting of temporary resident status but on or before the end of 43 months from the date of actual approval of the temporary resident application. 8 C.F.R. § 245a.3(b)(1).

The applicant was granted temporary resident status on December 1, 2003. The 43-month eligibility period for filing for adjustment expired on July 1, 2007. The Form I-698 application was filed on September 3, 2007. The director therefore terminated the applicant's Form I-687 application for temporary resident status because of the applicant's failure to timely file a Form I-698 application. Due to the termination of the Form I-687 application, the director denied the Form I-698 application.

A review of the record reveals that Citizenship and Immigration Services (CIS) issued a Form I-797 approval notice and travel authorization to the applicant on December 1, 2003. The notice indicated that the authorization was valid from November 7, 2003 to November 6, 2007. This notice was merely intended to advise the applicant of the approval of his Form I-687 application and the validity of his travel authorization through November 6, 2007 on this basis. However, a reasonable interpretation of the notice might be that the recipient had until November 6, 2007 in which to file his Form I-698 application. Although no form of notification was required, the record indicates that the applicant was never provided with any notification of the requirement to file his Form I-698 application within the 43-month period.

The applicant submitted multiple affidavits explaining his belief that CIS would notify him of the next steps in his immigration process prior to the expiration of his Form I-687 authorization in November 2007. Despite this assumption, the applicant indicated that he diligently and proactively attempted to contact CIS prior to November 2007. The applicant provided evidence of an attempt to contact CIS on July 12, 2007 in the form of a cellular telephone bill. The applicant also described numerous other attempts to obtain information regarding the next step in the process both prior to and after July 12, 2007. The applicant indicated that he did not receive instructions regarding the 43-month filing requirement until he received the NOIT that was issued on August 6, 2007. The applicant's Form I-698 was received by CIS within one month of that date.

Given the likelihood of confusion related to the Form I-797 authorization extending beyond the 43-month period and given the particular circumstances relating to the applicant, it is concluded that the Form I-698 application should not be considered to have been untimely filed. It is further concluded that the applicant relied on the information provided by CIS in the Form I-797 authorization, and such reliance resulted in an adverse decision in this instance. Therefore, allowing the decision to stand would result in a manifest injustice.

The case is remanded in order that the director withdraw the termination of the Form I-687 and fully adjudicate the application for adjustment from temporary to permanent resident status on its merits as if it had been timely filed. If adverse, the decision may be certified to the AAO without fee.

ORDER: The case is remanded for appropriate action consistent with the above.