

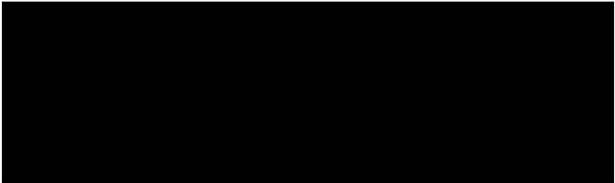


U.S. Citizenship
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FILE: [REDACTED]
MSC-07-158-11403

Office: TEXAS SERVICE CENTER Date: **OCT 27 2008**

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 appeal will be sustained.

The director denied the Form I-698 application for adjustment from temporary to permanent resident status on September 27, 2007 because the Form I-687 application for temporary resident status was terminated on September 13, 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. In the notice terminating the Form I-687 application, the director erroneously concluded that the Form I-687 was abandoned and, therefore, that the applicant had no opportunity to appeal the denial of the Form I-687 application. According to 8 C.F.R. § 245a.2(u)(2)(i), an applicant may appeal to the AAO a decision terminating his Form I-687 application. Therefore, the applicant was improperly denied an opportunity to appeal the termination of the Form I-687 application that underlies the denial of his Form I-698 application.

On appeal of the Form I-698 application, counsel for the applicant asserts that the Form I-687 application was terminated in error. She states that the applicant only failed to file the Form I-698 because of the delays in proper adjudication of his Form I-687 application. She states that the director delayed in notifying the applicant of the approval of his Form I-687 application, failed to notify the applicant of his responsibility to file the Form I-698 within the prescribe 43-month period, and failed to consider the applicant's response to the Notice of Intent to Terminate (NOIT).

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 record indicates that the applicant was granted temporary resident status on April 12, 2003. However, the record also indicates that a Form I-797 Notice of Action informing the applicant of approval of his Form I-687 application was not generated at that time. The applicant provided evidence of an attempt to obtain information about his case from United States Representative [REDACTED]. In a letter to the applicant dated March 23, 2005, [REDACTED] informed the applicant that his Form I-687 application had been approved but that an approval notice was never generated. [REDACTED] stated that the congressional liaison for her office would generate an approval notice that would be mailed to the applicant's current address. The record shows that a Form I-797 approval notice was issued to the applicant on March 31, 2005 with a validity date from April 12, 2003 to April 11, 2007. This indicates that the applicant was not notified that his temporary resident status was granted until March 31, 2005. If counted from the date that the applicant was actually informed of the approval of his Form I-687 application, the 43-month eligibility period for filing for adjustment would expire on October 30, 2008. The Form I-698 application was filed on March 4, 2007, prior to the expiration of this period. The director 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. As stated above, the director erroneously failed to notify the applicant of his opportunity to appeal the denial of his Form I-687 application to the AAO. Due to the termination of the Form I-687 application, the director denied the Form I-698 application.

Given that the applicant was finally informed of the approval of his Form I-687 application more than two years late, and given that the applicant filed his Form I-698 application within 43 months of being notified of the approval of his Form I-687 application, it is concluded that the Form I-698 application should be considered to have been timely filed. It is further concluded that the applicant's failure to file his Form I-698 application with 43 months of the actual approval of his Form I-687 application resulted merely from the director's failure to timely notify the applicant of this approval. The director's error 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 appealed to the AAO without fee.

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