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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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Services

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FILE:

MSC-06-098-15633

Office: CHICAGO

Date:

**AUG 19 2009**

IN RE:

Applicant:

APPLICATION:

Application to Adjust Status from Temporary to Permanent Resident pursuant to Title 8 of C.F.R. § 245a.3.

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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 if your case was remanded for further action, you will be contacted.

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The application to adjust status from temporary resident to permanent resident pursuant to 8 C.F.R. § 245a.3 was denied by the Director, Chicago, and is now before the Administrative Appeals Office (AAO) on appeal. The director's decision is withdrawn. The appeal will be remanded for further action and consideration.

The director denied the Form I-698, application to adjust status from temporary to permanent resident, finding that the applicant had failed to meet her burden of proving by a preponderance of the evidence that she entered the United States before January 1, 1982 and had thereafter resided continuously in the United States until the date of filing the application. Specifically, the director noted that the evidence submitted was neither sufficient nor credible to overcome the applicant's burden of proof.

On appeal, the applicant maintains that she is eligible for temporary resident status pursuant to Section 245A of the Immigration and Nationality Act and that she has submitted sufficient credible documents to prove her eligibility.

Pursuant to 8 C.F.R. § 245a.3, the application for adjustment from temporary to permanent resident status shall not be denied if the applicant: (a) pays the required fee and files the application within 43 months from the date of actual approval of the temporary resident application; and (b) establishes continuous residence in the United States since the date she was granted such temporary resident status, is admissible to the United States as an immigrant, and has minimal understanding of ordinary English language and a basic knowledge of the civics and history of the United States.

A review of the record in this case reveals that the director approved the Form I-687, application for temporary resident status, on October 2, 2003. The applicant paid the required fee and timely filed the Form I-698, application to adjust status from temporary to permanent resident, on October 20, 2003. On January 19, 2006, the director denied the Form I-698 application to adjust status and determined that the applicant was not eligible for permanent resident status because she failed to produce sufficient credible evidence to establish her continuous residence in the United States since before January 1, 1982. There is no indication in the director's decision that the applicant was inadmissible or that she was not physically present in the United States anytime after her temporary resident application was approved in October 2003. Nor is there evidence that the applicant does not possess minimal understanding of English language or that she does not have a basic knowledge of the United States history at the time her application to adjust status was denied in January 2006.

Upon a *de novo* review, the AAO finds that the director's conclusion in denying the Form I-698 application to adjust status is in error. Accordingly, the decision of the director in this matter is withdrawn. The case will be remanded.

On remand, the director shall adjudicate the Form I-698 in accordance with the regulation at 8 C.F.R. § 245a.3. If the application was timely filed, the applicant is not inadmissible, possesses English and history skills, and resided in the United States from the date the Form I-687 application was approved until the requisite time, the Form I-698 application is approvable.

On remand, the director may also review the evidence of record and determine whether the applicant is eligible for temporary resident status pursuant to Section 245A of the Act. If, after a complete review of the evidence has been conducted, the director finds that the applicant is not eligible for temporary resident status, then the director is not constrained from reopening the Form I-687 temporary resident status application *sua sponte* pursuant to 8 C.F.R. § 245a.2(q) and determining whether the applicant's temporary resident status should be terminated in accordance with the procedures at 8 C.F.R. § 245a.2(u). **If the applicant's temporary resident status is properly terminated, the Form I-698 application will become moot.**

**ORDER:** The director's decision is withdrawn. The matter is remanded for further action and consideration pursuant to the above instruction. If the decision on the Form I-698 application is adverse to the applicant, the decision shall be certified to the AAO for review.