

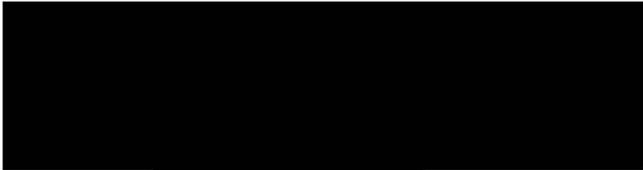
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U.S. Citizenship  
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FILE: [Redacted]  
MSC-07-242-11325

Office: LOS ANGELES

Date: FEB 11 2009

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:

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 remanded for further action, you will be contacted.

John F. Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The application for adjustment from temporary to permanent resident status was denied by the Field Office Director, Los Angeles, and is now before the Administrative Appeals Office (AAO) on appeal. This matter will be remanded for further action and consideration.

The record reflects that the applicant filed her Form I-698, Application to Adjust Status From Temporary to Permanent Resident, on May 28, 2007. On August 1, 2007, an Officer with the Texas Service Center issued the applicant a Request for Evidence (RFE) to her address of record. The applicant was granted 90-days to submit the requested evidence. On February 7, 2008, the Director, Los Angeles Field Office, denied the application as abandoned because the applicant failed to respond to the RFE within the 90-day allotted period of time.

On appeal, the applicant asserts that she responded to the RFE as soon as she received a document from the Social Security Administration, dated stamped October 9, 2007.<sup>1</sup> The applicant furnishes a copy of this document as well as the other documents she claims to have timely filed in response to the RFE.

The director denied the application as abandoned pursuant to 8 C.F.R. § 103.2(b)(13), which provides that if an applicant fails to respond to the RFE by the required date, the application may be summarily denied as abandoned, denied based on the record, or denied for both reasons. However, the regulation at 8 C.F.R. § 103.2(b)(13) does not pertain to the present case.

The regulations for adjudicating applications for adjustment of status under section 245A of the Immigration and Nationality Act (Act) are provided at 8 C.F.R. § 245a.3. The regulation at 8 C.F.R. § 245a.3(d)(6) provides, in pertinent part:

Once an application has been accepted by the Service and additional information and/or documentation is required, the applicant shall be sent a notice to submit such information and/or documentation. In such case the application Form I-698 shall be retained at the RPF [Regional Processing Facility]. If a response to this request is not received within 60 days, a second request for correction, additional information, and/or documentation shall be made. If the second request is not complied with by the end of 43 months from the date of the application for temporary residence, Form I-687, was approved the application for permanent residence with be adjudicated on the basis of the existing record.

In the present case, the sole basis for the director's denial is because the applicant failed to respond to the RFE. Pursuant to the above cited regulation, director should have instead adjudicated her application based on the existing record. Accordingly, the director's denial of the application as abandoned because the applicant failed to response to the RFE is in error, and shall be withdrawn from the record.

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<sup>1</sup> The RFE requests a copy of the applicant's Social Security Statement.

It should also be noted that the record shows that the applicant was scheduled to appear for an interview on February 7, 2008 at the Los Angeles Field Office in connection with her application for permanent residence. The applicant failed to appear for this interview, and the director denied her application as abandoned for failure to respond to the RFE.

The regulation at 8 C.F.R. § 245a.3(e) provides, in pertinent part:

Each applicant must be interviewed by an immigration officer . . . . An applicant failing to appear for the scheduled interview may, for good cause, be afforded another interview. Where an applicant fails to appear for two scheduled interviews, his or her application shall be held in abeyance until the end of 43 months from the date the application for temporary residence was approved and adjudicated on the basis of the existing record.

As stated in the above cited regulation, an applicant may be rescheduled for a second interview if s/he had good cause for her failure to appear for the first interview. On February 14, 2008, the Los Angeles Field Office received a statement from the applicant requesting her case to be transferred because she moved to Mount Vernon, Washington. The AAO finds that the applicant has provided good cause for her failure to appear, which should afford her a second interview.

Since the director's decision fails to adhere to the above regulatory requirements, the decision to deny the application as abandoned is in error shall be withdrawn. The matter shall be remanded and the file returned to the director. The director shall forward the applicant's record to the Seattle Field Office, and the applicant shall be afforded an adjustment interview at that office.

**ORDER:** This matter is remanded for further action and consideration.