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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:

SRC-01-161-55474

Office: MESQUITE

Date:

JUL 29 2009

IN RE:

Applicant:

[REDACTED]

APPLICATION: Application for Status as a Temporary Resident pursuant to 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. 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 District Director, Mesquite, terminated the applicant's temporary resident status. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The director terminated the applicant's temporary resident status because the applicant failed to apply for adjustment to permanent resident status within the required period.

On appeal, the applicant requests reconsideration of the termination of his temporary resident status and states that he did not receive notice to file Form I-698.

Section 245A(b)(2) of the Act states, in pertinent part:

*Termination of temporary residence.* – The [Secretary of Homeland Security] shall provide for termination of temporary resident status granted an alien under subsection (a) –

\* \* \*

(C) at the end of the 43<sup>rd</sup> month beginning after the date the alien is granted such status, unless the alien has filed an application for adjustment of such status pursuant to paragraph (1) and such application has not been denied.

The corresponding regulation at 8 C.F.R. § 245a.2(u)(1)(iv) further prescribes that the status of an alien lawfully admitted for temporary residence under section 245A(a)(1) of the Act may be terminated at any time if “[t]he alien fails to file for adjustment of status from temporary resident to permanent resident on Form I-698 within forty-three (43) months of the date he/she was granted status as a temporary resident[.]” The applicant bears the burden to timely file the application for adjustment from temporary to permanent resident status within the prescribed 43-month period. See 8 C.F.R. § 245a.3(b)(1). The statute and regulations do not allow a waiver of untimely filing.

The record in this case shows that the applicant was granted temporary resident status under section 245A(a)(1) of the Act on September 23, 2003, and had until April 27, 2007 in which to file his Form I-698, Application to Adjust Status from Temporary to Permanent Resident. Nevertheless, the Form I-797 Notice of Approval indicates that the applicant's temporary resident status is valid from September 29, 2003 through September 29, 2007.

The director terminated the applicant's temporary resident status after determining that the applicant had failed to file his Form I-698 application within the prescribed 43-month filing period which ended on April 27, 2007.

In the instant case, the Form I-797 approval notice and the applicant's employment authorization document (EAD) did not expire until September of 2007. The applicant filed the I-698 in July of 2007. As the approval notice and EAD card were valid until September 2007, and the applicant filed the Form I-698 within the validity period of these documents, the appeal will be sustained. The applicant's status was improperly terminated pursuant to section 245A(b)(2) of the Act and the corresponding regulation at 8 C.F.R. § 245a.2(u)(1)(iv). The director's decision terminating

the applicant's temporary residence is withdrawn, as is the denial of permanent residence.

**ORDER:** The appeal is sustained. The director shall complete the adjudication of the application for permanent residence.