

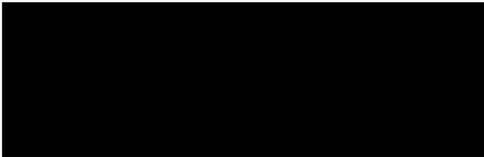
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U. S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



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FILE:



Office: TEXAS SERVICE CENTER

Date:

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IN RE:

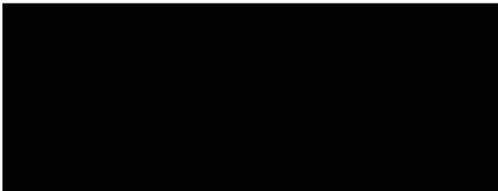
Applicant:



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:



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 termination of the applicant's temporary resident status by the Director, Southern Service Center, is before the Administrative Appeals Office (AAO) on appeal. The decision will be affirmed and the appeal will be dismissed.

The record reflects that the applicant was granted temporary resident status under section 245A of the Immigration and Nationality Act (Act) on October 20, 1987. On April 12, 1989, the applicant filed an application for adjustment from temporary to permanent resident status (Form I-698). During the adjudication of the adjustment application, it was determined that the applicant is excludable (now referred to as inadmissible) based on his HIV positive status. The applicant filed a Form I-690 application to request a waiver of this ground of inadmissibility.

On January 30, 1992, the Director, Southern Service Center (now the Texas Service Center), issued the applicant a notice of intent to terminate his temporary residence based on his inadmissibility as an alien who is determined to have been infected with HIV. On July 23, 1992, the Director determined that the applicant failed to submit sufficient documentation to establish his eligibility for a waiver of this ground of inadmissibility and terminated his temporary residence.¹

The applicant, through former counsel, appealed the termination of his residence to the AAO on September 8, 1992. On February 28, 2007, the AAO rejected the applicant's appeal as untimely because it was filed almost five months after the issuance of the termination notice.² On April 2, 2007, the applicant filed a motion to reconsider the termination of his temporary resident status and the rejection of his appeal. On May 24, 2007, the Director, Texas Service Center, denied this motion.

On April 2, 2007, the applicant filed a second Form I-690 waiver application. The Director, Texas Service Center, denied the waiver application because the applicant no longer had an underlying application for benefits under section 245A of the Act. On June 28, 2007, the applicant, through current counsel, appealed the denial of his waiver application. On May 11, 2009, the AAO determined that procedural errors in the applicant's case warrant the AAO to *sua sponte* reconsider the appeal of the termination of his temporary residence and reopen the proceedings.³

The Attorney General [now Secretary, Department of Homeland Security] shall provide for termination of temporary resident status granted to an alien if it appears to the Attorney General [Secretary] that the alien was in fact not eligible for such status. Section 245A(b)(2)(A) of the Immigration and Nationality Act (Act), 8 U.S.C. § 1255a(b)(2)(A).

¹ USCIS database records show that the application to adjust status from temporary to permanent resident was denied on April 15, 1992. However, the record of proceedings does not contain a copy of the denial notice, or evidence that the applicant was afforded the right to appeal the denial.

² USCIS database records show that the applicant's status was terminated on April 15, 1992. However, the termination notice in the record is dated July 23, 1992. Nevertheless, the applicant's appeal was still untimely filed 47 days later.

³ Although motions to reopen a proceeding or reconsider a decision shall not be considered under Section 245A of the Act, the AAO may *sua sponte* reopen and reconsider any adverse decision. See 8 C.F.R. 245a.2(q).

The director terminated the applicant's temporary residence because he was found to be inadmissible to the United States pursuant to section 212(a)(1)(A)(i) of the Act, 8 U.S.C. § 1182(a)(1)(A)(i), as an alien who is determined to have been infected with HIV, a communicable disease of public health significance. The AAO notes that the applicant has not contested this ground of inadmissibility.

Section 212(a)(1)(A)(i), 8 U.S.C. § 1182(a)(1)(A)(i), of the Act provides that any alien who is determined (in accordance with regulations prescribed by the Secretary of Health and Human Services) to have a communicable disease of public health significance, which shall include infection with the etiologic agent for acquired immune deficiency syndrome is inadmissible.⁴ Aliens infected with HIV, however, upon meeting certain conditions, may have such inadmissibility waived.

Pursuant to 8 C.F.R. § 245a.3(d)(4), an applicant who is inadmissible under section 212(a)(1)(A)(i) of the Act, 8 U.S.C. § 1182(a)(1)(A)(i), due to HIV infection, must demonstrate the following three conditions will be met if a waiver is granted and he is granted adjustment of status from temporary to permanent residence:

- (1) the danger to the public health of the United States created by the alien's admission is minimal;
- (2) the possibility of the spread of the infection created by the applicant's admission is minimal; and
- (3) there will be no cost incurred by any government agency without prior consent of that agency.

If the applicant meets these criteria, the Attorney General [Secretary], may waive such inadmissibility in the case of individual aliens for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest. Section 245A(d)(2)(B)(i) of the Act, 8 U.S.C. § 1255a(d)(2)(B)(i).

On May 11, 2009, the AAO sent a notice to the applicant and counsel requesting additional evidence to demonstrate his eligibility for a waiver of inadmissibility. The AAO requested the applicant to furnish documentation to establish that if he is granted adjustment of status, there will be no cost incurred by any government agency without prior consent of that agency.⁵ See 8 C.F.R. § 245a.3(d)(4).

⁴ Human Immunodeficiency Virus (HIV) has been determined by the Public Health Service to be a communicable disease of public health significance. 42 C.F.R. § 34.2(b)(4).

⁵ The AAO also requested the applicant to furnish additional financial documentation to establish that he is not inadmissible as a public charge pursuant to section 212(a)(4)(A) of the Act, 8 U.S.C. § 1182(a)(4)(A). The AAO

On June 12, 2009, the AAO received a response from counsel requesting an extension of 60 days to respond to the request for additional evidence. The AAO granted the 60 days extension. However, the AAO did not receive any additional documentation from the applicant. Therefore, the AAO dismissed the applicant's appeal of his waiver application, finding that, pursuant to 8 C.F.R. § 245a.3(d)(4), the applicant failed to demonstrate that if he is admitted to the United States, there will be no cost incurred by any government agency without prior consent of that agency.

As stated, an applicant for temporary resident status must establish that he is admissible to the United States as an immigrant. Section 245A(a)(4)(A) of the Act, 8 U.S.C. § 1255a(a)(4)(A). Here, the applicant is inadmissible to the United States pursuant to section 212(a)(1)(A)(i) of the Act, 8 U.S.C. § 1182(a)(1)(A)(i), as an alien infected with HIV, a communicable disease of public health significance. Therefore, the applicant is not eligible for status as a temporary resident under section 245A of the Act.

Since the applicant is inadmissible to the United States, and he has not satisfied the requirements for a waiver of inadmissibility, he is not eligible for temporary resident status. Accordingly, the termination of the applicant's temporary resident status will be affirmed and the appeal will be dismissed.

ORDER: The appeal is dismissed.

now notes that pursuant to section 245A(d)(2)(B)(i) of the Act, 8 U.S.C. § 1255a(d)(2)(B)(i), this requirement is waivable for applicants for temporary resident status.