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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
and Immigration
Services

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FILE: [REDACTED]
XHU 88 157 05019

Office: MESQUITE

Date: **SEP 17 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:



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, Texas Service Center, is before the Administrative Appeals Office (AAO) on appeal. The director's decision terminating the applicant's temporary resident status will be withdrawn and the matter remanded to the director.

The director terminated the applicant's temporary resident status on May 18, 2007 because the applicant failed to respond to a Notice Of Intent To Terminate (NOIT) issued on April 6, 2007 within the time permitted for response. The applicant timely appealed the termination, stating that a response was filed to the NOIT, but that the director failed to consider the response. Counsel forwarded with this appeal an unsigned copy of the applicant's response to the NOIT.

The basis of the April 6, 2007 NOIT was that the applicant failed to appear for a second interview on January 30, 1998. The director noted that notices were sent to the applicant on November 15, 1996, May 7, 1997 and August 22, 2005, but that the applicant failed to appear for her interviews or provide valid reasons for her failure to appear. A review of United States Citizenship and Immigration Services (USCIS) records, however, indicate that the August 22, 2005 and May 7, 1997 notices to appear were sent to incorrect mailing addresses after the applicant had provided USCIS with appropriate change of address forms. As such, the director's decision terminating the applicant's status under Section 245a of the Immigration and Nationality Act (the Act) will be withdrawn.

On May 18, 2007, the director forwarded to the applicant a second NOIT noting that Section 245A(b)(2) of the Act provides that the attorney general shall terminate temporary resident status granted to an alien under subsection (a)(C) at the end of the 43rd month beginning after the date the alien is granted such status, unless the alien has filed an application for adjustment of status and that application has not been denied. The director noted that the applicant had filed two Form I-698 applications for adjustment from temporary to permanent resident status and that both had been denied. This NOIT was mailed to the applicant in care of [REDACTED]

[REDACTED]. However, the applicant's mailing address of record is: [REDACTED]

The director shall provide the applicant with another opportunity for an interview and continue adjudication of her applications. If the director terminates the applicant's temporary resident status, the decision shall be certified to the AAO.

ORDER: The director's decision terminating the applicant's temporary resident status for failing to respond to a NOIT dated April 6, 2007 is withdrawn. Proceedings shall continue as set forth in this decision.