U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: SEP 28 2009

SRC 02 092 53413
SRC 08 021 53982 - APPEAL

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

The applicant was granted temporary resident status on January 24, 2003 under section 245A of the Immigration and Nationality Act (Act), as amended, 8 U.S.C. § 1255a. The applicant was required to file an application to adjust status from temporary to permanent resident within forty-three (43) months of receiving his temporary resident status. *See* 8 C.F.R. § 245a.3(b)(1). Pursuant to section 245A(b)(2)(C) of the Act, 8 U.S.C. § 1255a(b)(2)(C), a failure to file an application for adjustment to permanent residence within this statutory filing period will result in the termination of the applicant's temporary residence. On March 13, 2007, the TSC Director sent the applicant a Notice of Intent to Terminate finding the applicant had failed to file a Form I-698, Application to Adjust Status from Temporary to Permanent Resident, within forty-three months of being granted temporary resident status.

The applicant subsequently filed a Form I-698 on April 11, 2007. He acknowledged that he had not filed within the required forty-three month period but asserted that as he did not have an attorney or legal advisor and was ignorant about the facts and procedures for filing a Form I-698, he could not file it before the expiration of 43 months.

On September 28, 2007, the TSC Director issued a decision rescinding the applicant's temporary resident status. In so finding the director noted the applicant had been given 30 days to respond to the March 13, 2007 Notice of Intent to Terminate and had failed to respond. It is noted that on August 8, 2007, the Director, New York sent the applicant a Notice of Intent to Rescind finding the original approval of his Form I-687 was in error, that the applicant did not establish that he continuously resided in the United States for the duration of the requisite period and that he had submitted a fraudulent application.

On appeal, from the TSC Director's September 28, 2007, the applicant submits evidence to show that he responded to the TSC Director's March 13, 2007, Notice of Intent to Terminate on September 5, 2007. In that response, the applicant argued the New York Director's notice incorrectly attempts to rescind his "lawful permanent resident" status whereas he had been granted temporary resident status. The applicant further stated that he disagreed with the New York Director's fraud allegations and stands by his original assertions and submissions.

Although the New York Director may have found legitimate reasons for rescinding the applicant's temporary residence status, the appeal in this matter is made to the TSC Director's determination that his temporary resident status be terminated because he had failed to file his Form I-698 within the required time period.

Any appeal which is filed solely on the basis of a denial for failure to file the application for adjustment of status under section 210 or 245A in a timely manner, will be summarily dismissed.

8 C.F.R. § 103.3(a)(3)(iv)(B) and (C). Neither the statute nor the regulation allows for a discretionary exception to this rule.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.