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



**U.S. Citizenship
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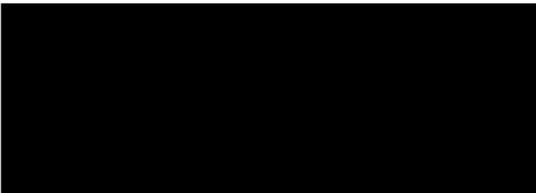
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FILE: [REDACTED] Office: NATIONAL BENEFITS CENTER Date: **AUG 02 2010**
MSC 09 246 11500

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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

Erin H. McCormack

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application for adjustment from temporary to permanent resident status in the legalization program was denied by the Director, National Benefits Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the adjustment application because the applicant was not in temporary resident status, and the applicant was therefore not eligible for adjustment to permanent resident status.

On appeal, counsel for the applicant asserts that the applicant had been granted temporary resident status and that such status had not been properly terminated. Counsel also explains that the applicant received a notice of denial and a notice of approval of his Form I-687 application for temporary resident status on the same day, but that at an Infopass appointment, a representative of USCIS informed him that the application appeared to have been approved.

An alien who has been lawfully admitted for temporary resident status under section 245A of the Act, such status not having been terminated, may apply for adjustment of status of that of an alien lawfully admitted for permanent residence. 8 C.F.R. § 245a.3(b). The applicant has not been lawfully admitted for temporary resident status. The record indicates that an approval notice was prepared and sent in error. There is no indication that the applicant had been approved in USCIS databases. The director sent a notice of intent to deny and a notice of denial of his Form I-687 application for temporary resident status to the applicant and counsel.

The AAO notes further that in *Bassey v. INS*, No. C01-4035 SI, 2002 WL 31298854 (N.D. Cal. Oct. 10, 2002) the court held that even though the Immigration & Naturalization Service (INS) (now United States Citizenship & Immigration Services) had stamped Mr. [REDACTED] passport with temporary proof of lawful permanent residence and had issued him notice that his application for lawful permanent resident status had been approved, INS had never adjusted Mr. [REDACTED] status because federal statute mandated that his application for lawful permanent residence be denied as Mr. [REDACTED] had previously entered a fraudulent marriage for the purpose of securing immigration benefits and the relative petition underlying his application for lawful permanent residence had been denied. Consequently, according to the [REDACTED] court, INS lacked the authority to adjust Mr. [REDACTED] status to that of lawful permanent resident and the temporary proof of lawful resident status stamped in Mr. [REDACTED] passport had no legal effect. See [REDACTED] at *5-6. See also *Peng v. Gonzales*, No. C-06-07872 JCS, 2007 WL 2141270 (N.D. Cal. July 25, 2007)(which affirms those aspects of [REDACTED] set forth here and distinguishes [REDACTED] on other grounds.) See also *Nelson v. Reno*, 204 F. Supp. 2d 1355 (S.D. Fla. 2002) at 1359-60 (where the court held that despite the Form I-551 stamp in Mr. [REDACTED] passport, INS had not adjusted his status as the Form I-130 filed on his behalf was never approved and thus the INS had no authority to adjust his status.) In keeping with these precedents, the AAO finds that even though INS stamped a Form I-94 with temporary proof of lawful permanent resident status on the applicant's behalf, INS never adjusted his status because federal statute mandated that his application for lawful permanent resident status be denied as his temporary resident status had been terminated prior to the adjudication of the Form I-698 and that status was never reinstated.

The applicant is not a temporary resident. Therefore, he is ineligible for adjustment from temporary to permanent resident status.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility for adjustment from temporary to permanent resident status.