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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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[REDACTED]

FILE:

[REDACTED]

Office: HOUSTON

Date: AUG 03 2010

IN RE:

Applicant:

[REDACTED]

APPLICATION: Application for Adjustment from Temporary to Permanent Resident Status 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. 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.

Elizabeth McCormack

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application for adjustment from temporary to permanent resident status was denied by the Director, Houston Texas, and the matter is now before the Administrative Appeals Office (AAO) on appeal. This matter will be remanded for further action and consideration.

The director denied the adjustment application based upon the conclusion that the applicant had failed to appear for the required interview on January 26, 2010, and therefore, had abandoned his adjustment application under 8 C.F.R. § 103.2(b)(12).

On appeal, counsel and the applicant assert that the applicant never intended to miss his appointment with United States Citizenship and Immigration Services or USCIS (formerly the Immigration and Naturalization Service or the Service) on January 26, 2010, but instead arrived late after getting lost. Counsel acknowledges that a written request for another appointment was never submitted, but contends that the applicant should be granted a second interview.

The regulation at 8 C.F.R. § 245a.3(e) states in pertinent part:

Each applicant regardless of age, must appear at the appropriate Service office and must be fingerprinted for the purpose of issuance of Form I-551. Each applicant shall be interviewed by an immigration officer, except that an adjudicative interview may be waived for a child under 14, or when it is impractical because of the health or advanced age of the applicant. An applicant failing to appear for the scheduled interview may, for good cause, be afforded another interview. Where an applicant fails to appear for two scheduled interviews, his or her application shall be held in abeyance until the end of 43 months from the date the application for temporary residence was approved and adjudicated on the basis of the existing record.

The record shows that the applicant filed a Form I-687, Application for Temporary Resident Status Pursuant to Section 245A of the Act, on September 25, 1987. The record further shows that he applicant was granted temporary residence on February 16, 1988. The applicant subsequently filed the Form I-698, Application to Adjust Status from Temporary to Permanent Resident Status, on April 27, 1990.

Although the electronic record shows that the applicant failed to appear for the required interview on November 17, 1990, January 17, 1991, and March 10, 1992, the administrative record contains no appointment notices or any other documents to establish that the applicant was scheduled to appear for interviews on these dates and failed to appear. Rather, appointment notices and a completed I-551 fingerprint card in the record demonstrate that the applicant appeared for a scheduled interview relating to his Form I-698 adjustment application at the Service office in Houston, Texas on February 25, 1992. The record contains no indication that the applicant was scheduled to appear for another interview relating to his Form I-698 adjustment application until an appointment notice dated December 11, 2009 was issued to the applicant scheduling him to appear for an interview at the USCIS office in Houston, Texas at 10:30 A.M. on January 26, 2010. As noted above, the applicant asserts that he never intended to miss his appointment with USCIS on

January 26, 2010, but instead arrived late after getting lost. Consequently, the applicant's first and only documented failure to appear for an interview must be considered as an innocent mistake and the applicant, for good cause, should have been given the opportunity to appear for a second interview. Consequently, the director's denial of the Form I-698 adjustment application shall be withdrawn.

The case will be remanded for the purpose of scheduling the applicant for an interview to continue the adjudication of his Form I-698 adjustment application.¹ If the applicant fails to appear for a second time for a scheduled interview, such action would warrant the adjudication of the Form I-698 adjustment application based upon the current record of proceedings pursuant to 8 C.F.R. § 245a.3(e). Any new decision, if adverse, shall be certified to this office for review.

ORDER: This matter is remanded for further action and consideration pursuant to the above.

¹ It must be noted that a review of evidence submitted by the applicant in support of his Form I-687 application demonstrates that such evidence may not have been sufficient to warrant a grant of temporary residence. Specifically, it does not appear that such evidence meets the regulatory requirements set forth in 8 C.F.R. § 245.2(d)(2)(i) and 8 C.F.R. § 245.2(d)(2)(ii) to establish that the applicant and "Jesse G. Torres," "Jesse Torres," and "J. G. Torres" are all one and the same individual.