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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] Office: LOS ANGELES Date: DEC 10 2013

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:

SELF-REPRESENTED

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.

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The termination of the applicant's temporary resident status by the director of the Los Angeles Office is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director terminated the applicant's temporary resident status because the applicant failed to file the application for adjustment of status from temporary to permanent residence within the 43-month application period.

On appeal, the applicant states that the reason she did not timely file a Form I-698, application to adjust status from temporary to permanent resident, was because her notary told her she could file the application late without a penalty. It is noted that any appeal based upon a claim of ineffective assistance of counsel requires: (1) that the claim be supported by an affidavit of the allegedly aggrieved respondent setting forth in detail the agreement that was entered into with counsel with respect to the actions to be taken and what representations counsel did or did not make to the respondent in this regard, (2) that counsel whose integrity or competence is being impugned be informed of the allegations leveled against him and be given an opportunity to respond, and (3) that the appeal or motion reflect whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of counsel's ethical or legal responsibilities, and if not, why not. *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988). The applicant has not submitted any of the required documentation to support an appeal based on ineffective assistance of counsel. Furthermore, the AAO only considers complaints based upon ineffective assistance against accredited representatives.<sup>1</sup> Therefore, the applicant is found not to have established a claim of ineffective assistance of counsel.

The AAO has considered the applicant's assertions, reviewed all of the evidence, and has made a *de novo* decision based on the record and the AAO's assessment of the credibility, relevance and probative value of the evidence.<sup>2</sup>

The status of an alien lawfully admitted for temporary residence under section 245A(a)(1) of the Act may be terminated at any time if the alien fails to file for adjustment of status from temporary to permanent resident on Form I-698 within forty-three months of the date he/she was granted status as a temporary resident under § 245a.1 of this part. 8 C.F.R. § 245a.2(u)(1)(iv).

The applicant was granted temporary resident status on September 21, 2005. The 43-month eligibility period for filing for adjustment expired on April 20, 2009. The Form I-698, application to adjust status from temporary to permanent resident, was filed on June 22, 2009. Therefore the I-698 application was untimely filed.

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<sup>1</sup> Although the applicant was not assisted by an attorney but by a notary, there is no remedy available for an applicant who assumes the risk of authorizing an unlicensed attorney or unaccredited represented to undertake representations on his or her behalf. See 8 C.F.R. § 292.1. The AAO only considers complaints based upon ineffective assistance against accredited representatives. Cf. *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1<sup>st</sup> Cir. 1988)(requiring an appellant to meet certain criteria when filing an appeal based on ineffective assistance of counsel).

<sup>2</sup> The AAO conducts appellate review on a *de novo* basis. The AAO's *de novo* authority is well recognized by the federal courts. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

As the applicant has not overcome the grounds for termination of temporary resident status, the appeal must be dismissed.

The record reveals that removal proceedings were instituted against the applicant on June 11, 2001, pursuant to section 212 (a)(6)(A)(i) of the Immigration and Nationality Act, as amended, as an alien present in the United States without having been admitted or paroled. On November 14, 2002, the Immigration Judge granted voluntary departure with an alternate order of removal to Mexico if the applicant did not depart the United States by January 13, 2003, which date was extended until October 15, 2004. The applicant departed the United States on June 24, 2006.

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