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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

41

FILE:



Office: HOUSTON

Date:

DEC 23 2010

IN RE:

Applicant:



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:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has 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.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application to adjust status from temporary to permanent resident pursuant to section 245A of the Immigration and Nationality Act (Act) was denied by the director of the Houston office, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

On May 20, 2010, the director denied the Form I-698, application to adjust status from temporary to permanent resident, as untimely filed.¹

On appeal, the applicant asserts that she was never notified of the approval of her Form I-687, application for status as a temporary resident, or of her responsibility to file the I-698 application within the prescribed 43-month period.²

To be eligible for adjustment from temporary to permanent resident status, an applicant must apply for such adjustment anytime subsequent to the granting of temporary resident status but on or before the end of 43 months from the date of actual approval of the temporary resident application. 8 C.F.R. § 245a.3(b)(1).

The record indicates that the applicant was granted temporary resident status on November 9, 1988. However, the record does not contain evidence that a Form I-797, notice of action, was generated at that time, or at any subsequent time, informing the applicant that her I-687 application was approved and that she was granted temporary resident status. The 43-month eligibility period for filing for adjustment from temporary to permanent resident status expired on June 9, 1992. The I-698 application was filed with the correct fee on September 10, 2008. The director denied the I-698 application as untimely filed.

The AAO notes that the Immigration and Naturalization Service (INS) and private voluntary organizations widely publicized the requirement of applying for adjustment of status to permanent residence within the requisite period. INS sent notices to aliens' last known addresses, specifically advising them of the requirement. The original eligibility period of filing for adjustment of status to permanent residence was 31 months. This period was extended to 43 months to better enable applicants to file timely applications.

On December 20, 1990, INS field offices were sent the following instructions in IMMACT '90 Wire #16 Cable 1588-C: "All field sites should be advised to extend an I-688 when an alien is encountered *and* it has been less than 42 months since that alien was granted temporary resident status...A check of the LAPS database will provide the actual approval date of the temporary resident

¹ The AAO notes that on May 20, 2010, the director also issued a notice of intent to terminate (NOIT) the applicant's temporary resident status, because the applicant failed to establish that she had timely filed a Form I-698 application. It does not appear from the record that the director has issued a notice of termination in this case. The record contains an undated, incomplete notice of termination that appears to have been placed in the record erroneously, since the information contained in the notice of termination is inconsistent with the information in the record.

² The applicant, who was 15 years old when she was granted temporary resident status, asserts that she was advised of her "legal status" by her parents in 1994, and of her temporary resident status in August 2008, when she filed a Form I-90, Application to Create Permanent Resident Card. The I-90 application was rejected.

application. *The alien should be advised that he/she has X amount of time left to apply for permanent residence.* (Emphasis supplied.) Aliens should be provided with another M-306, a temporary resident's guide to applying for permanent residence..."

On February 3, 1992, INS published in the Federal Register the final rule regarding the one-year extension of the deadline for filing applications for adjustment from temporary to permanent residence for legalized aliens. INS noted that the forty dollar late filing fee was based on estimated additional administrative costs, which included mailers to each eligible applicant who had not yet filed an application for adjustment from temporary to permanent residence. 57 Fed. Reg. 3925-3926 (February 3, 1992).

The record in the present case reflects that a procedural error prevented the applicant from receiving the aforementioned mailer notification from INS. Subsequent to filing the I-687 application, the applicant changed her address to [REDACTED]. The new address appears in the record on a Form I-693, medical examination form, signed by an examining physician on September 8, 1988. The change of address was not noted on the applicant's I-687 application at the time of the approval on September 9, 1988. However, the applicant's change of address was updated in the INS database system, because on March 17, 1991, the director sent a mailer to the applicant's updated address, incorrectly spelling the address as, [REDACTED]. The mailer stated that INS had not received her application for permanent resident status and reminded her to file the application. The mailer was returned to INS with a U.S. Postal Service note that the mailer was undeliverable as addressed, and could not be forwarded. There is no indication that INS then corrected the applicant's address or undertook any other action to contact the applicant.

Based upon the foregoing evidence that INS failed to properly update the applicant's address in its record system, it is likely that the applicant did not receive any mailers from INS regarding the filing of her I-698 application.³ Had the applicant received a mailer for late filing as discussed in the above Federal Register notice, she and/or her parents would have had the opportunity to late file a Form I-698. Therefore, the AAO finds that in this particular case, the failure of the legalization office to properly update the applicant's address was likely detrimental to her ability to properly file a Form I-698.

Given Service error to properly update the applicant's address in the record system, the AAO finds that the Form I-698 application was timely filed. The appeal will be sustained and the matter returned to the director to complete adjudication of the application for adjustment from temporary to permanent resident status on its merits as if it had been timely filed. If adverse, the decision may be appealed to the AAO without fee.

ORDER: The appeal is sustained.

³ In addition, based upon the record, although there is no evidence that an approval notice was sent, if it was sent it is unlikely that it was received.

