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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

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**U.S. Citizenship
and Immigration
Services**

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FILE:



Office: LOS ANGELES

Date:

DEC 30 2010

IN RE:

Applicant:



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 to adjust status from temporary to permanent resident within the 43-month application period.

On appeal, the applicant admits that he did not timely file a Form I-698, application to adjust status from temporary to permanent resident, and asserts that the reason he did not timely file the application was that he relied on his tax preparer to do so.¹ 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.² Therefore, the applicant is found not to have established a claim of ineffective assistance of counsel.³

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 July 18, 2005. The 43-month eligibility period for filing for adjustment expired on February 18, 2009. The Form I-698, application to adjust status from temporary to permanent resident, was filed on July 24, 2009. Therefore the I-698 application was untimely.

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

¹ The director denied the I-698 application as untimely. The applicant did not appeal the director's decision.

² Although the applicant was not assisted by an attorney but by a tax preparer, there is no remedy available for an applicant who assumes the risk of authorizing an unlicensed attorney or unaccredited representative 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 (1st Cir. 1988)(requiring an appellant to meet certain criteria when filing an appeal based on ineffective assistance of counsel).

³ The AAO notes that in his appeal brief, the applicant refers to his filing as a motion to reopen the I-687 application. Motions to reopen a proceeding or reconsider a decision shall not be considered under Section 245A of the Act. Therefore, the AAO will treat the applicant's motion to reopen as an appeal.



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