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FILE: [REDACTED] Office: CHICAGO Date: [REDACTED]
XPN-93-181-00012

JAN 15 2010

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:

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 applicant filed a Form 1-698, Application to Adjust from Temporary to Permanent Resident Status, which was subsequently denied. The application is before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

It appears that the application was denied because the applicant failed to file the application for adjustment of status from temporary to permanent residence within the 43-month application period. Section 245A(b)(1)(A) of the Immigration and Nationality Act (Act), 8 U.S.C. § 1255a(b)(1)(A).¹

On appeal, the applicant asserts that she was depending upon her attorney to do everything possible to help her with her case. The applicant has not submitted any additional evidence on appeal.

The applicant was granted temporary resident status on September 7, 1988. The 43-month eligibility period for filing for adjustment expired on April 7, 1992. The record shows that the I-698 application was received, along with the proper fee, by USCIS on July 21, 1993. Therefore, it appears that the I-698 application was denied as untimely filed.

On appeal, the applicant alleges ineffective assistance of the counsel. Any appeal or motion 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, United States Citizenship and Immigration Services (USCIS) is not responsible for the action, or inaction, of the applicant's counsel.

The burden to file the adjustment application in a timely manner remains with the applicant. *See* 8 C.F.R. § 245a.3(d). The record of proceedings does not contain any evidence that the applicant did, in fact, file an I-698 application within the required period of time, therefore, the application was properly denied by the director on this ground.

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

¹ It should be noted that because the applicant's administrative file (A-file) is lost, the exact reason for the denial cannot be established. The A-file which should have contained an approved I-687 application (receipt number unknown), a denied I-698 application (receipt number XPN-93-181-00012) and a pending I-694 appeal (receipt number LIN-93-237-50516). The AAO is here adjudicating a second I-694 appeal (receipt number LIN-94-158-50868).