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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: TEXAS SERVICE CENTER Date:

JAN 29 2010

XLU 870 480 1022
SRC 09 009 54367-APPEAL

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:

[REDACTED]

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, Texas Service Center, is before the Administrative Appeals Office on appeal. The applicant was granted temporary resident status on July 22, 1988 under section 245A of the Immigration and Nationality Act (Act), as amended, 8 U.S.C. § 1255a. She was required to file a Form I-698, Application to Adjust Status from Temporary to Permanent Resident Under Section 245 A of the Immigration and Nationality Act (INA), within forty-three (43) months of receiving her temporary resident status, which would have been July 31, 1992. 8 C.F.R. § 245a.3(b)(1). Pursuant to section 245A(b)(2)(C) of the Act, 8 U.S.C. § 1255a(b)(2)(C), a failure to file an application for adjustment to permanent residence within this statutory filing period will result in the termination of the applicant's temporary residence. The applicant filed her application to adjust status from temporary to permanent resident on August 5, 1992, more than 43 months after the approval date of her temporary residence. On May 23, 2008, the director sent the applicant a Notice of Intent to Deny informing her that she had failed to file a timely Form I-698 and providing her an opportunity to submit evidence to overcome this finding. The director received no response and issued a decision on July 24, 2008 for abandonment. The applicant filed a Motion to Reopen which was denied by the director on September 10, 2008. The decision is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

On appeal, counsel states the director failed to comply with the regulations when he terminated the applicant's status as a temporary resident and that he failed to consider that the applicant had entered into an abusive relationship with her United States citizen husband subsequent to her grant of temporary residence. Counsel submits no evidence to show that the applicant timely filed her Form I-698 or the director failed to comply with regulations when he terminated the applicant's temporary resident status. It is noted that the assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988).

As stated in 8 C.F.R. § 103.3(a)(3)(iv), any appeal which is filed that fails to state the reason for appeal, or is patently frivolous, will be summarily dismissed.

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