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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**
XPS 80 601 04123
SRC 08 161 53809 – 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 J. 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 (AAO) on appeal. The appeal will be dismissed.

The applicant was granted temporary resident status on July 8, 2004 under section 245A of the Immigration and Nationality Act (Act), as amended, 8 U.S.C. § 1255a. The applicant was required to file an application to adjust status from temporary to permanent resident within forty-three (43) months of receiving his temporary resident status. *See* 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 his application to adjust status from temporary to permanent resident on February 29, 2008, which is outside the statutory filing period.

On appeal, counsel asserts the following:

1. That the director erred in his decision to deny the applicant the right of an appeal of the termination of his application.
2. That the applicant did not file for adjustment of status at an earlier date because neither the applicant nor his former attorney received the approval the temporary resident status.
3. That the 43-month period for the applicant to file for adjustment of status does not elapse until the end of February 2008.

Pursuant to section 245a.2(u)(2)(i) of the regulation, an alien may appeal the decision to terminate his temporary resident status to the AAO, together with the required fee within thirty (30) days after the service of Notice of Termination (NOT). The record reflects that the NOT was issued on March 24, 2008, and served on the applicant and counsel of record at their addresses of record. The record further reflects that the applicant timely filed a Form I-694 (Notice of Appeal) with the AAO. The AAO agrees with counsel that the applicant is entailed to appeal the termination of his temporary resident status with the AAO. The AAO will adjudicate the appeal on its merit based on the evidence in the record.

Counsel's claim that the applicant did not file for adjustment of status at an earlier date because neither the applicant nor the applicant's former counsel received the approval notice is without merit. The record reflects that the director mailed the Notice of Approval to the applicant and his counsel at their addresses of record. There is no evidence in the record that the notices were returned as undeliverable and counsel did not submit any objective credible evidence to support his assertion that the applicant was not aware that he was granted temporary resident status on July 8, 2004.

In similar vain, counsel's assertion that the applicant had until after February 29, 2008 to file for adjustment of status from temporary to permanent status is without merit. 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 burden to file the adjustment application in a timely manner remains with the applicant. *See* 8 C.F.R. § 245a.3(d).

The record reflects that the applicant was granted temporary resident status on July 8, 2004. The 43-month eligibility period for filing for adjustment expired on February 8, 2008. The applicant filed his Form I-698, Application for Adjustment of Status from Temporary to Permanent Resident, with the correct fee on February 29, 2008, which is beyond the time limit allowed. The director correctly terminated the applicant's temporary resident status because the applicant failed to file the Form I-698 within the 43-months allowed.

As stated in 8 C.F.R. § 103.3(a)(3)(iv), any appeal which is filed solely on the basis of a denial for failure to file the application for adjustment of status under section 210 or 245A in a timely manner, will be summarily dismissed.

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