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U. S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS2090
Washington, DC 20529-2090



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

L4

FILE:

[REDACTED]
XPN-92-182-00028

Office: NEBRASKA SERVICE CENTER

Date: **JAN 29 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:

[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 applicant filed a Form I-698, Application to Adjust from Temporary to Permanent Resident Status, which was subsequently denied by the director of the Nebraska Service Center. The application is before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

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

On appeal, the applicant has not addressed the grounds stated for denial, nor has she presented additional evidence relevant to the grounds for denial.¹

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 May 9, 1988. The 43-month eligibility period for filing for adjustment expired on December 10, 1991. The Form I-698, Application for Adjustment of Status from Temporary to Permanent Resident, was filed with the correct fee on July 17, 1992. The director therefore administratively denied the I-698 application, finding it was filed untimely.

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 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

¹ The record reflects that the applicant's FOIA request, [REDACTED] was processed on July 20, 2009.

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 include mailers to each eligible applicant who has 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 notifications from INS. The record reveals that on February 6, 1989, a notice of approval for replacement of the applicant's temporary resident card, sent to the applicant's address at [REDACTED] in Blue Island, Illinois, was returned as, "attempted – unknown". However, the applicant filed a change of address with the INS on February 3, 1988 indicating she had moved from [REDACTED] to [REDACTED]. On September 17, 1990, the director sent a mailer to the applicant at [REDACTED] in Blue Island, Illinois. 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 as undelivered with a U.S. Postal Service note that the applicant had moved and that the mail was not forwardable. The record contains a medical test report dated October 1, 1990, and a Form I-693, Medical Examination of Aliens Seeking Adjustment of Status, dated October 10, 1990, both of which state the applicant's address as [REDACTED]. There is no indication that INS then updated the applicant's address or undertook any action to contact the applicant at that time. On March 10, 1991, the director sent another, identical mailer to the applicant at her previous address, [REDACTED] in Blue Island, Illinois.

Based upon the foregoing evidence that INS failed to 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. Had the applicant received a mailer for late filing as discussed in the above Federal Register notice, she would have been informed that INS had not received her Form I-698, and she 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 update the applicant's address was likely detrimental to her ability to properly file a Form I-698.

Due to INS error, the AAO does not find that the application for adjustment of status should rightfully be considered untimely. Consequently, the applicant has overcome the particular basis of denial cited by the director.

The director also noted that the applicant's completed I-698 application did not contain one color photograph. The director shall provide the applicant with an opportunity to submit the required number of photographs.

The appeal will be sustained. The director shall continue the adjudication of the application for permanent resident status.

ORDER: The appeal is sustained.