

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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

PUBLIC COPY

L1

[REDACTED]

FILE:

[REDACTED]

Office: SAN ANTONIO

Date:

JUL 22 2010

IN RE:

Applicant:

[REDACTED]

APPLICATION:

Application to Adjust Status from Temporary to Permanent Resident Status 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.

Elizabeth M. McCormack

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application to adjust to permanent resident status pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a, was denied by the director of the San Antonio office and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The director denied the application, finding that the applicant had failed to establish that he had continuously resided in the United States during the requisite period.

On appeal, the applicant states that in an interview notice, he had been advised to bring evidence of his residence since the date his Form I-687 application for temporary residence had been approved in 2006. He further states that at the interview, the officer instead asked for evidence of his residence from January 1, 1982 throughout the requisite period and denied his Form I-698 due to his failure to submit such evidence.

Any alien who has been lawfully admitted for temporary resident status under section 245A of the Immigration and Nationality Act, such status not having been terminated, may apply for adjustment of status of that of an alien lawfully admitted for permanent residence in the alien: timely applies for adjustment; establishes continuous residence in the United States since the date the alien was granted temporary resident status; is admissible; has not been convicted of any felony, or three or more misdemeanors; and can demonstrate that the alien meets the English/civics requirements of the Act. 8 C.F.R. § 245a.3.

The AAO finds that at the Form I-698 interview the director unfairly adjudicated continuous residence from before January 1, 1982 through the end of the requisite period without adequate notice to the applicant. The AAO withdraws the director's decision dated March 24, 2010.

Further, upon a *de novo* review of the record, the AAO finds that the applicant has been granted temporary resident status, and such status has not been properly terminated. The record contains a copy of an approval notice, which has handwritten the words revoked 3/24/10. Although the United States Citizenship and Immigration Services (USCIS) data base indicates that USCIS issued a notice of intent to terminate, a revocation and an intent to revoke, copies of such notices are not in the record. To properly terminate temporary resident status, the USCIS must first issue a notice of intent to terminate and permit the applicant an opportunity to respond. 8 C.F.R. § 245a.2(u)(2)(i). Here, the USCIS failed to follow correct procedure. The applicant maintains temporary resident status at this time.

The appeal will be sustained.

ORDER: The appeal is sustained. The director shall continue the adjudication of the application for permanent resident status.