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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
and Immigration
Services

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FILE:



MSC 07 304 13058

Office: NEW YORK

Date: **MAR 23 2010**

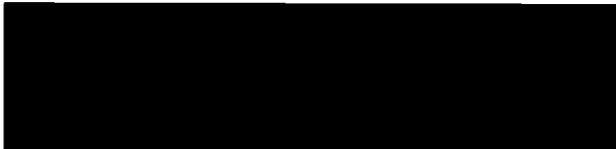
IN RE:

Applicant:



APPLICATION: Application for Adjustment from Temporary to Permanent Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a.

ON BEHALF OF APPLICANT:



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 Director, New York, New York, denied the application for adjustment to permanent resident status in the legalization program because it was untimely filed. The matter is now before the Administrative Appeals Office. The appeal will be rejected.

The record shows that the applicant was granted temporary resident status under 245A of the Immigration and Nationality Act (Act) on June 25, 2003. The deadline for the applicant to file the Form I-698, Application for Adjustment from Temporary to Permanent Resident, with forty-three months of being granted temporary residence was January 7, 2007. The record reflects that the applicant filed the Form I-698 adjustment application on July 23, 2007, more than forty-nine months after he had been granted temporary residence.

Pursuant to section 245A(f)(2) of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a(f), no denial of adjustment of status under this section based on a late filing of an application for such adjustment may be reviewed by a court of the United States or of any State or reviewed in any administrative proceeding of the United States Government.

The Administrative Appeals Office is without authority to review the denial of the application. The appeal must be rejected, in spite of the fact that the director stated an appeal could be filed.

Nevertheless, it must be noted that the director previously stated that the applicant was withdrawing his Form I-485 LIFE Act application so that he could proceed with his Form I-698 adjustment application in a notice dated June 27, 2007. The director should reopen, sua sponte, the Form I-485 LIFE Act application because the applicant's deadline for timely filing his Form I-698 adjustment application had lapsed and the applicant would have no reason to withdraw either the Form I-485 LIFE Act application or the Form I-698 adjustment application unless he had been granted permanent resident status.

ORDER: The appeal is rejected.