



U.S. Citizenship
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Services

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[REDACTED]

FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: **MAY 07 2010**

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.

Elizabeth McCormack

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.¹ The appeal will be dismissed.

The applicant was granted temporary resident status on March 16, 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 record reflects that the director issued a Notice of Intent to Terminate (NOIT) the temporary resident status on December 12, 2007, based on the fact that the applicant had not filed application to adjust status from temporary resident to permanent resident status (FORM I-698) within 43 months from the date of the approval of the temporary resident application. The director noted that since the application for temporary resident was approved on March 16, 2004, the applicant was eligible to file for permanent resident status from October 16, 2005 to October 16, 2007. The director granted the applicant thirty (30) days to offer evidence of compliance or in the alternative evidence that his failure to submit his application was beyond his control and due to emergent reasons. The director determined that the applicant did not respond to the NOIT or submit the required evidence. On February 1, 2008, the director issued a Notice of Decision (NOD) terminating the applicant's temporary resident status due to abandonment.

On appeal, the applicant submits evidence that he responded to the NOIT. The director's decision to terminate due to abandonment shall be withdrawn. Nonetheless, the applicant failed to timely file his Form I-698 and for that reason, this appeal will be dismissed.

ORDER: The appeal is dismissed.

¹ Although counsel referred to his appeal as a motion to reopen, legalization applicants do not have motion rights. This is the first challenge to the director's decision so it shall be treated as an appeal.