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

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[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: SEP 08 2010

IN RE: Applicant: [redacted]

APPLICATION: Application for Temporary 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 if your case was remanded for further action, you will be contacted.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The applicant's status as a temporary resident was terminated by the Director, Texas Service Center. The termination of temporary residence was appealed to the Administrative Appeals Office (AAO) and dismissed. This case will be reopened pursuant to the regulations at 8 C.F.R. § 103.5(b) which provide that the AAO may of its own volition (sua sponte) reopen or reconsider a decision under section 245A of the Immigration and Nationality Act (Act), and the previous dismissal of the appeal shall be withdrawn. The appeal will be sustained.

The director terminated the applicant's temporary resident status based upon the determination that the applicant had failed to file a Form I-698, Application to Adjust Status from Temporary to Permanent Status, within forty-three months of being granted temporary residence.

On appeal, the applicant stated that he relied on a Form I-797, Notice of Action, sent to him by United States Citizenship & Immigration Services or USCIS (formerly the Immigration and Naturalization Service or the Service), which appeared to give him until September 29, 2007 to timely file the Form I-698 adjustment application. The applicant provided a copy of the Form I-797 notice. The AAO accepts the applicant's statement and supporting evidence.

The status of an alien lawfully admitted for temporary residence under section 245A(a)(1) of the Immigration and Nationality Act (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).

Under the facts presented in this record of proceedings, the AAO finds that the applicant timely filed the Form I-698 adjustment application.

The termination of temporary residence is withdrawn and the applicant's status as a temporary resident shall be restored. The director shall complete the adjudication of the Form I-698 adjustment application for permanent residence.

ORDER: The appeal is sustained.