

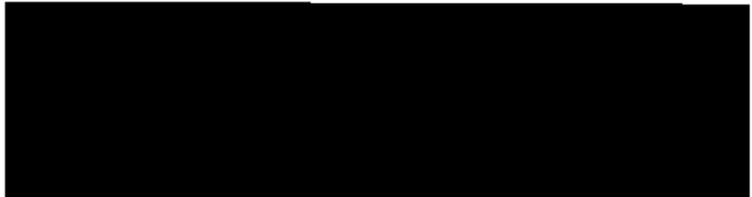
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**

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DATE: DEC 28 2011

Office: LOS ANGELES

FILE:



IN RE: Applicant:



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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The termination of the applicant's temporary resident status by the Director, Los Angeles, is before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant was granted temporary resident status on August 1, 2005 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 applicant filed his application to adjust status from temporary to permanent resident on June 4, 2010, which is outside the statutory filing period.

On August 25, 2010, the director issued a Notice of Intent to Terminate (NOIT) the applicant's temporary resident status because his Form I-698 Application to Adjust from Temporary Resident Status was denied. 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 director denied the Form I-698 application because the applicant failed to file within the required 43 month period.

On appeal to the termination of his temporary resident status, the applicant asserts that he received incorrect information from his attorney or representative, G&G Specialized Service, regarding the date that he needed to file his Form I-698 application. The applicant indicates that his representative indicated that he was a *notario*, and he believed him to be a licensed attorney.

Any appeal or motion based upon a claim of ineffective assistance of counsel requires: (1) that the claim be supported by an affidavit of the allegedly aggrieved respondent setting forth in detail the agreement that was entered into with counsel with respect to the actions to be taken and what representations counsel did or did not make to the respondent in this regard, (2) that counsel whose integrity or competence is being impugned be informed of the allegations leveled against him and be given an opportunity to respond, and (3) that the appeal or motion reflect whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of counsel's ethical or legal responsibilities, and if not, why not. *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988).

In this case, the applicant submitted evidence that he had formally filed a complaint against his representative, however, there is no evidence in the file that the applicant was represented by a licensed attorney. The file does not contain a G-28 Notice of Appearance of Attorney or Authorized Representative. While the applicant indicates that this representative held himself out to be a licensed attorney, there is no remedy available for an applicant who assumes the risk

of authorizing an unlicensed attorney or unaccredited representative to undertake representations on its behalf. *See* 8 C.F.R. § 292.1. The AAO only considers complaints based upon ineffective assistance against accredited representatives. *Cf. Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988)(requiring an appellant to meet certain criteria when filing an appeal based on ineffective assistance of counsel). Because the representative is not an accredited representative registered with the Department of Justice, the AAO will dismiss the complaint and the appeal.

The AAO further notes that 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 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 AAO notes that the applicant failed to timely appeal the termination of his temporary resident status, and though he may have been given improper advice, an applicant assumes the risk of authorizing an unlicensed attorney or unaccredited representative to undertake representations on its behalf. *See* 8 C.F.R. § 292.1.

As stated in 8 C.F.R. § 103.3(a)(3)(iv), any appeal which is filed solely on the basis of a denial for failure to file the application for adjustment of status under section 210 or 245A in a timely manner, will be dismissed.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.