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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**

L1

[REDACTED]

FILE:

[REDACTED]

Office: TEXAS SERVICE CENTER

Date:

FEB 14 2011

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. 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 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, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed.

The applicant was granted temporary resident status on November 2, 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 her temporary resident status, which would have been June 2, 2009. *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 July 7, 2009, which is outside the statutory filing period.

On appeal, through counsel, applicant asserts that the reason for his failure to file in a timely manner was due to a clerical error by counsel's office. 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).

Counsel contends that the regulation at 8 C.F.R. § 245a.3(a)(2) provides that no application shall be denied for failure to timely apply before the end of 43 months from the date of the actual approval of the temporary resident application. Here, the applicant applied *after* the end of 43 months from the date of the actual approval of the temporary resident application. Thus, pursuant to section 245A(b)(2)(C) of the Act, 8 U.S.C. § 1255a(b)(2)(C), the director correctly terminated the applicant's temporary residence.

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 summarily dismissed.

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