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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**

[REDACTED]

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FILE:

[REDACTED]

Office: LOS ANGELES

Date:

FEB 22 2011

IN RE:

Applicant:

[REDACTED]

APPLICATION:

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

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has 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.

A handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Form I-698, application to adjust status from temporary to permanent resident pursuant to section 245A of the Immigration and Nationality Act (Act), was denied by the director of the Los Angeles office, and is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded.

On March 19, 2010, the director denied the I-698 application, because the applicant failed to file the application within the 43-month period subsequent to the granting of temporary resident status.¹ As a result, on May 7, 2010, the director terminated the applicant's Form I-687, application for temporary resident status.²

On appeal, the applicant asserts that he did not know he had to file the I-698 application on or before the end of 43 months from the date of approval of the application for temporary resident status.

The applicant was granted temporary resident status on November 25, 2005. The 43-month eligibility period for filing for adjustment expired on June 24, 2009. The I-698 application was filed on November 24, 2009. The director therefore denied the I-698 application as untimely.

A review of the record reveals that United States Citizenship and Immigration Services (USCIS) issued a Form I-797, approval notice and travel authorization, to the applicant on November 25, 2005. The notice indicated that the authorization was valid from November 25, 2005 to November 24, 2009. This notice was merely intended to advise the applicant of the approval of his I-687 application, and the validity of his travel authorization through November 24, 2009 on this basis. Although the body of the notice also advised the applicant of the requirement to file the Form I-698 application within the 43-month period, a reasonable interpretation of the notice might be that the recipient had until November 24, 2009 in which to file his I-698 application, which is exactly what the applicant did.

Given the likelihood of confusion related to the Form I-797 authorization extending beyond the 43-month period, it is concluded that the I-698 application should not be considered to have been untimely filed. It is further concluded that the applicant relied on the information provided by USCIS in the Form I-797 authorization, and such reliance resulted in an adverse decision in this instance. Therefore, allowing the decision to stand would result in a manifest injustice.

¹ To be eligible for adjustment from temporary to permanent resident status, an applicant must apply for such adjustment anytime subsequent to the granting of temporary resident status but on or before the end of 43 months from the date of actual approval of the temporary resident application. 8 C.F.R. § 245a.3(b)(1).

² 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 (43) months of the date he/she was granted status as a temporary resident. 8 C.F.R. 245a.2(u)(1)(iv).

The case is remanded in order that the director withdraw the termination of the I-687 application, and fully adjudicate the I-698 application for adjustment from temporary to permanent resident status on its merits as if it had been timely filed. If adverse, the decision shall be certified to the AAO without fee.

ORDER: The case is remanded for appropriate action consistent with the above.