

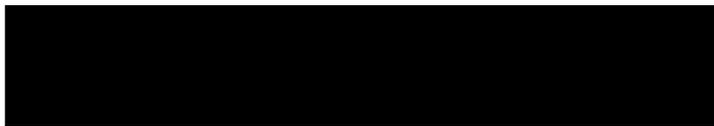
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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Date: **JUL 20 2011** Office: TEXAS SERVICE CENTER

FILE:

IN RE: Applicant:

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:

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. The matter was reopened by the AAO and the previous dismissal of the appeal was withdrawn. The AAO subsequently sustained the appeal. The matter will be reopened again 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under section 245A of the Immigration and Nationality Act (Act), and the previous sustain of the appeal shall be withdrawn. The appeal will be dismissed.

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 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).

The copy of the Form I-797 notice reflects that the applicant was given travel authorization for a period of four years. It also reflects that the applicant had to file a Form I-698 adjustment application within 43 months of the date of approval of his application for temporary resident status. The applicant's application for temporary resident status was granted on September 30, 2003. The applicant had until April 30, 2007 to timely file his Form I-698 adjustment application. However, the applicant filed the Form I-698 adjustment application on March 17, 2008. Therefore, the Form I-698 adjustment application must be considered to be untimely filed. The burden to file the adjustment application in a timely manner remains with the applicant. *See* 8 C.F.R. § 245a.3(d).

The statements of counsel on appeal have been considered. Nevertheless, there is no waiver available, even for humanitarian reasons, of the requirements stated above. As the applicant has not overcome the grounds for termination of status, the appeal must be dismissed.

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