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



**U.S. Citizenship
and Immigration
Services**

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[REDACTED]

FILE:

[REDACTED]

Office: TEXAS SERVICE CENTER

Date: **MAR 30 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:

[REDACTED]

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.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application for adjustment from temporary to permanent resident status pursuant to section 245A of the Immigration and Nationality Act (Act) was denied by the director of the Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

On July 30, 2010, the director denied the Form I-698, application for adjustment from temporary to permanent resident status, as untimely filed.

On appeal, the applicant asserts that she was never notified of the approval of her Form I-687, application for status as a temporary resident, or of her responsibility to file the I-698 application within the prescribed 43-month period.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).

The record indicates that the applicant was granted temporary resident status on July 29, 1988. However, the record does not contain evidence that a Form I-797, notice of action, was generated at that time, or at any subsequent time, informing the applicant that her I-687 application was approved and that she was granted temporary resident status. The 43-month eligibility period for filing for adjustment from temporary to permanent resident status expired on February 29, 1992. The I-698 application was filed with the correct fee on January 14, 2010. The director denied the I-698 application, as untimely filed.

The AAO notes that the Immigration and Naturalization Service (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..."

¹ The applicant, who was 11 years old when she was granted temporary resident status, asserts that she was advised of the fact that she was not a U.S. citizen by her father at the time of completing a jury duty questionnaire. The applicant was subsequently advised of her temporary resident status on September 9, 2009, when her Form I-90, application to create permanent resident card, was denied by the National Benefits Center, and she was advised to file the I-698 application.

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 record in the present case reflects that applicant did not receive the aforementioned mailer notification from INS. On March 10, 1991 and July 23, 1991, the director sent a mailer to the applicant stating that INS had not received her application for permanent resident status, and reminding her to file the application. The mailer was returned to INS with a U.S. Postal Service note that the mailer was undeliverable as addressed, and could not be forwarded. There is no indication that INS undertook any other action to contact the applicant. Had the applicant received a mailer for late filing as discussed in the above Federal Register notice, she and/or her parents would have had the opportunity to late file a Form I-698.

Given that the applicant was never informed of her responsibility to file the Form I-698 within the prescribed 43-month period, the AAO does not find that the Form I-698 application should rightfully be considered untimely. Therefore, the appeal is sustained and the file is returned to the director to fully adjudicate the application for adjustment from temporary to permanent resident status on its merits as if it had been timely filed.²

ORDER: The appeal is sustained.

² The AAO notes that the record does not contain court dispositions for the applicant's arrests. The record reveals that on March 18, 2000, the applicant was charged with one count of violating section 784.03 of the Florida Penal Code, *Battery*. (Orange County Sheriff's Office, case [REDACTED]). The record also reveals that on October 9, 2007, the applicant was charged with one count of violating section 316.193(3)(c)(1) of the Florida Vehicle Code, *DUI and Damage to Property* (Florida Highway Patrol, Orlando, case number 4801096224).