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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: **APR 02 2012**

OFFICE: LOS ANGELES

FILE: 

IN RE: Applicant: 

APPLICATION: Application to Adjust 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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the National Benefits Center. If your appeal was sustained, or if the matter 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.

Thank you,

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

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application for temporary resident status under Section 245A of the Immigration and Nationality Act (Act) was terminated by the Field Office Director (director), Los Angeles, California. The decision to terminate is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the Application to Adjust Status From Temporary to Permanent Resident (Form I-698) because it was filed after the statutory filing period had expired, and terminated the applicant's temporary resident status. The director noted that the applicant was granted temporary resident status on January 20, 2007 and was required to file his Form I-698 application within 43 months, but failed to do so.

On appeal, counsel asserts the applicant did not file the Form I-698 within 43 months of the approval of his temporary resident status because of the legal incompetence of his preparer, his family and life emergencies, and his health problems. Counsel submits a statement from the applicant and documents pertaining to his daughter's medical problems.

Counsel alleges ineffective assistance of prior representative for failing to timely file the applicant's Form I-698. However, counsel does not submit any of the required documentation to support an appeal based on ineffective assistance of representative. In his declaration submitted with the appeal, the applicant contends that the preparer who helped him complete his Form I-687 application did not assist him with completing his Form I-698 until after the August 19, 2010 deadline.

Although counsel asserts that the applicant was not assisted by an attorney but by [REDACTED] a document preparer, there is no remedy available for an applicant who assumes the risk of authorizing an unlicensed attorney or unaccredited representative to undertake representations on his 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). Furthermore, USCIS is not responsible for the action, or inaction, of the applicant's representative.

The temporary resident status of an alien may be terminated upon the determination that the alien was ineligible for temporary residence. Section 245A(b)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1255a(b)(2)(A), and 8 C.F.R. § 245a.2(u)(i).

The Form I-687 approval notice clearly notifies that the regulations on section 245a.3 requires that the applicant must file an Application to Adjust Status From Temporary to Permanent Resident, Form I-698, before the end of the forty-third (43) month from the date of his approval. The approval notice further notifies that failure to timely file this application will result in the denial of his application for permanent resident and the termination of his temporary resident status.

We note the applicant's statement that he did not timely file his Form I-698 as he was attending to his daughter who was having academic and substance abuse problems, and because he had health issues. However, there is no humanitarian exception for failing to timely file the Form I-698.

As discussed above, the applicant was granted temporary resident status on January 20, 2007, and was required to file his Form I-698 application no later than August 19, 2010. The record reflects that the applicant filed his Form I-698 application on September 21, 2010, after the statutory deadline. As the applicant failed to timely file his I-698 by the deadline, the appeal must be dismissed.

A review of the decision reveals that the director accurately set forth a legitimate basis for denial of the application. On appeal, the applicant has not presented additional probative evidence to overcome the stated reasons for the director's denial. The appeal must, therefore, be dismissed.

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