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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]

Date: **APR 17 2012** Office: SAN JOSE

[REDACTED]

IN RE: [REDACTED]

APPLICATION: Application for Status as a Temporary Resident 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. 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 remanded for further action, you will be contacted.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The applicant's temporary residence status was terminated by the Director, San Jose, California. This decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant was granted lawful temporary residence on November 6, 2006. On July 15, 2010, the applicant filed Form I-698, Application to Adjust Status from Temporary to Permanent Resident. The director determined that the Form I-698 was not timely filed and on March 15, 2011, issued a Notice of Intent to Terminate (NOIT) the applicant's temporary resident status and granted the applicant 30 days to submit evidence in rebuttal. The applicant submitted her statement in response to the NOIT. On June 8, 2011, the director terminated the applicant's temporary resident status, finding the applicant failed to timely file her Form I-698 with United States Citizenship and Immigration Services (USCIS).

On appeal, the applicant claims that she had been informed at her interview on November 18, 2010 that she had one year before the expiration of her temporary status to file for adjustment to that of permanent resident.

Upon review, the AAO finds that the applicant was granted temporary resident status on November 6, 2006 under section 245A of the Immigration and Nationality (Act), as amended, 8 U.S.C. § 1255a. The applicant was required to file an application to adjust status from temporary to permanent resident on or before the end of the 43 months of receiving his temporary resident status which is June 5, 2010. *See* 8 C.F.R. § 245a.3(b)(1). This requirement was clearly stated on the approval notice. It states: "As required by Title 8, Code of Federal Regulations, Section 245a.3, you must file an application for adjustment from temporary to permanent resident status Form I-698, before the end of the forty-third (43) month from the date of your approval. Failure to timely file this application will result in the denial of your application for permanent resident and the termination of your temporary resident status." 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. *See* 8 C.F.R. § 245a.2(u)(1)(iv). The applicant filed her application to adjust status from temporary to permanent resident on July 15, 2010, which is outside the statutory filing period.

Counsel states on appeal that the application should be approved based on 8 C.F.R. § 245a.3(a)(2) which states that "No application shall be denied for failure to timely apply before the end of the 43 months from the date of actual approval of the temporary resident application." However, Section 245A(b) states in pertinent part:

(2) Termination of Temporary Residence

The Attorney General shall provide for termination of temporary resident status granted an alien under subsection (a)-

(C) at the end of the 43rd month beginning after the date the alien is granted such status, unless the alien has filed an application for adjustment of such status pursuant to paragraph (1) and such application has not been denied.

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