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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: **JAN 30 2012** Office: OAKLAND PARK

FILE: [REDACTED]

IN RE: Applicant: [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:

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 termination of the applicant's temporary resident status by the director of the Oakland Park office is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director terminated the applicant's temporary resident status because the applicant failed to file the Form I-698, application for adjustment of status from temporary to permanent residence, within the 43-month application period.

On appeal, the applicant, through counsel, admits the I-698 application was not filed within the 43-month period, but asserts this failure is not a basis for termination of the applicant's temporary resident status. The applicant has submitted copies of documents which reveal that his I-698 application was filed on April 2, 2007.¹

The AAO has considered the applicant's assertions, reviewed all of the evidence, and has made a *de novo* decision based on the record and the AAO's assessment of the credibility, relevance and probative value of the evidence.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 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 applicant was granted temporary resident status on August 15, 2003. The 43-month eligibility period for filing for adjustment expired on March 15, 2007. The approval notice clearly states the requirement to file the I-698 application during the 43-month eligibility period. The record reflects that on August 15, 2003, the approval notice was mailed to the applicant at his address of record. The evidence of record does not reflect, nor does the applicant contend, that the approval notice was not delivered to the applicant. The record reflects that the applicant filed the I-698 application on April 2, 2007. Therefore, the applicant failed to timely file the I-698 application.

The burden to file the adjustment application in a timely manner remains with the applicant. *See* 8 C.F.R. § 245a.3(d). The record of proceedings does not contain any evidence that the applicant did, in fact, file an I-698 application within the required period of time, therefore, the application was properly denied by the director on this ground. As the applicant has not overcome the grounds for termination of temporary resident status, the appeal must be dismissed.

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

¹ On appeal, the applicant has submitted copies of additional documents which have previously been submitted into the record.

² The AAO conducts appellate review on a *de novo* basis. The AAO's *de novo* authority is well recognized by the federal courts. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).