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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**

[REDACTED]

L1

DATE: **JUN 07 2012**

OFFICE: SAN ANTONIO, TX

[REDACTED]

IN RE: Applicant:

[REDACTED]

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:

[REDACTED]

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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The applicant's temporary resident status under Section 245A of the Immigration and Nationality Act (Act) was terminated by the Field Office Director (director), San Antonio, Texas. The decision to terminate is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director terminated the applicant's temporary resident status because the applicant failed to file her Application to Adjust Status From Temporary to Permanent Resident (Form I-698) during the statutory filing period. The director noted that in a September 30, 2011, Notice of Intent to Terminate (NOIT), the applicant was notified that her temporary resident status would be terminated because she failed to timely file her Form I-698. In the NOIT, the director noted that the applicant was granted temporary resident status on October 2, 2007, and was required to file her Form I-698 application within 43 months and her eligibility for filing expired in May 2011. However, there is no evidence of record that the applicant filed the Form I-698. In his decision to terminate, the director noted that the applicant failed to overcome the reasons for termination.

On appeal, the applicant states that her attorney filed the wrong application, and requests that she be granted employment authorization. The applicant does not submit additional evidence.

In effect, the applicant alleges ineffective assistance of prior representative(s). However, the applicant does not submit any of the required documentation to support an appeal based on ineffective assistance of representative.

Any appeal or motion based upon a claim of ineffective assistance of representative requires: (1) that the claim be supported by an affidavit of the allegedly aggrieved applicant setting forth in detail the agreement that was entered into with the representative with respect to the actions to be taken and what representations the representative did or did not make to the applicant in this regard, (2) that the representative whose integrity or competence is being impugned be informed of the allegations leveled against him and be given an opportunity to respond, and (3) that the appeal or motion reflect whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of representative's ethical or legal responsibilities, and if not, why not. *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988). Furthermore, USCIS is not responsible for 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 her application for permanent resident and the termination of his temporary resident status.

As discussed above, the applicant was granted temporary resident status on October 2, 2007, and she was required to file a Form I-698 application no later than May 1, 2011. The record does not reflect that the applicant has filed her Form I-698 application and as the record lacks documentation to establish that the applicant had a valid reason for her failure to timely file her Form I-698 by the deadline, the appeal must be dismissed.

It is also noted that that the applicant's Federal Bureau of Investigation (FBI) fingerprint results report, completed in connection with application, reflects that:-

- 1) On March 4, 1994, the applicant was arrested by the San Antonio Police Department, and charged with, Charge 1: "THEFT \$750 - 20000 SHOPLIFTING;" and,
- 2) On March 4, 1994, the applicant was arrested by the San Antonio Sheriff's Office, and charged with, Charge 1: "THEFT 200 - 750-ST PROP - POSSESS."

It is noted that the final court dispositions for these arrests are not in the record of proceeding. United States Citizenship and Immigration Services must address these arrests and any convictions in any future proceedings.

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.