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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:

**MAR 05 2012**

Office: LOS ANGELES

FILE:



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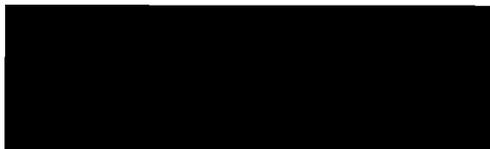
Applicant:



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.

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

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The termination of the applicant's temporary resident status by the director of the Los Angeles office is before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant was granted temporary resident status on May 15, 2007, under section 245A of the Immigration and Nationality Act (Act), as amended, 8 U.S.C. § 1255a. The applicant was required to file a Form I-698, application to adjust status from temporary to permanent resident, within forty-three (43) months of receiving his temporary resident status. See 8 C.F.R. § 245a.3(b)(1). Pursuant to section 245A(b)(2)(C) of the Act, 8 U.S.C. § 1255a(b)(2)(C), a failure to file an I-698 application within this statutory filing period will result in the termination of the applicant's temporary resident status. The applicant failed to timely file an I-698 application.<sup>1</sup> Therefore, the director terminated the applicant's temporary resident status.

On appeal, counsel asserts that the decision of the director is in error. However, in rebuttal to the notice of intent to terminate (NOIT) the I-687 application, the applicant admitted that he did not timely file the I-698 application, in part because he was unemployed and could not afford the filing fee. The applicant has not submitted any further evidence on appeal.

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 burden to file the adjustment application in a timely manner remains with the applicant. See 8 C.F.R. § 245a.3(d). The record reflects that the applicant was granted temporary resident status on May 15, 2007. The 43-month eligibility period for filing for adjustment expired on December 14, 2010. The record reflects that the applicant's I-698 application was filed on January 14, 2011. The applicant, therefore, failed to timely file an I-698 application. The director correctly terminated the applicant's temporary resident status based upon the applicant's failure to file the I-698 application within the 43-months allowed.<sup>2</sup>

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<sup>1</sup> On April 25, 2011, the applicant's I-698 application was denied because it not filed within the 43-month statutory filing period.

<sup>2</sup> The record also reveals the applicant has a criminal history. On February 17, 1985, the applicant was arrested and charged with a violation of section 12020(a) of the California Penal Code (PC), *Possession/Manufacture/Sell Dangerous Weapon*. On February 20, 1985, the charges against the applicant were dismissed due to lack of probable cause. On August 30, 1987, the applicant was charged with violations of the California Vehicle Code (VC) as follows: section 23153(b)(VC), *DUI .10 Alcohol Cause Bodily Injury*; section 23153(a)(VC), *DUI Alcohol/Drugs Cause Bodily Injury*; and, section 20001 (VC), *Hit and Run: Death or Injury*. On August 31, 1987, the applicant was convicted of violations of sections 23153(a)(VC) and 20001(VC), both misdemeanors, and the remaining charge against the applicant was dismissed. Also on August 31, 1987, the applicant was sentenced to five years of probation, 30 days in jail, ordered to pay a fine, and the imposition of sentence was suspended.

The applicant's two misdemeanor convictions are not an additional basis on which to find the applicant to be ineligible for temporary resident status.

As stated in 8 C.F.R. § 103.3(a)(3)(iv), any appeal which is filed solely on the basis of a denial for failure to file the application for adjustment of status under section 210 or 245A in a timely manner, will be summarily dismissed.

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