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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: SAN ANTONIO

FILE:

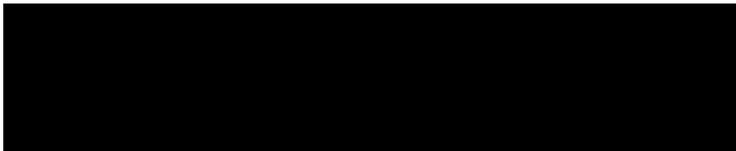


IN RE: Applicant:



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. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if your case 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.

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The director of the San Antonio office terminated the applicant's status as a temporary resident under section 245A of the Immigration and Nationality Act (INA). The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The director terminated the applicant's temporary resident status and therefore, the applicant was not eligible for adjustment to permanent resident status. The director terminated the applicant's temporary resident status because the applicant failed to file Form I-698 within the statutory 43-month filing period.

On appeal, counsel states that the previous attorney of record failed to properly advise the applicant that an application to adjust his status from temporary to permanent resident (Form I-698) had to be filed within 43-months of the date his application for temporary resident status was approved. Evidence has been submitted in support of the appeal.

The applicant's temporary resident status was granted on October 25, 2006. The applicant was required to file an 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 application for adjustment to permanent residence within this statutory filing period will result in the termination of the applicant's temporary residence. An alien whose temporary resident status has been terminated under 8 C.F.R. § 245a.2(u) is ineligible for adjustment from temporary to permanent resident status. 8 C.F.R. § 245a.3(c)(5).

Any appeal or motion based upon a claim of ineffective assistance of counsel requires: (1) that the claim be supported by an affidavit of the allegedly aggrieved respondent setting forth in detail the agreement that was entered into with counsel with respect to the actions to be taken and what representations counsel did or did not make to the respondent in this regard, (2) that counsel 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 counsel'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 (1<sup>st</sup> Cir. 1988).

In an affidavit, the applicant states that he never was advised by his previous attorney to file the Form I-698. Instead, on July 23, 2010, his previous attorney had the applicant sign a Form I-765, Application for Employment Authorization, to renew his work authorization. The application was rejected on August 12, 2010 because it was submitted with an incorrect fee. The previous attorney again had the applicant sign a new Form I-765 on August 20, 2010 and again it was rejected on September 14, 2010 for being mailed to the wrong address. The applicant claims that the previous attorney still did not mention anything about filing the Form I-698. The applicant states that upon receiving the Notice of Intent to Terminate (NOIT), he made an appointment with Citizenship and Immigration Services in San Antonio, Texas, when an officer told him that his attorney had filed the

wrong forms twice and that he would handle his case and call him in three days. In the interim, the applicant received the Notice of Termination of his temporary resident status.

The applicant submitted evidence of filing Forms I-765, the rejection letters and evidence of an interview set for September 27, 2010 with an officer of the Service. He also submitted an affidavit setting forth in detail the agreement he had with former counsel, evidence of the grievance he filed against the previous attorney with the Office of the Chief Disciplinary Counsel, State Bar of Texas and evidence that prior counsel was informed of the complaint and given an opportunity to respond. Therefore, the applicant is found to have established a claim of ineffective assistance of counsel. The AAO finds that the applicant's temporary resident status should not have been terminated for the applicant's failure to timely apply for permanent resident status. The appeal is sustained and the case will be returned to the director to continue adjudication of the Form I-698.

**ORDER:** The director's decision of December 23, 2010 is withdrawn. The appeal is sustained.