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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**



LI

DATE: MAY 01 2012

OFFICE: LOS ANGELES, CA

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. 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, Los Angeles, California. The decision to terminate is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The director terminated the applicant's temporary resident status because he determined that the applicant failed to timely file his Application to Adjust from Temporary to Permanent Resident Status (Form I-698) within the statutory filing period. In his denial, the director noted that the applicant responded to an October 20, 2011 Notice of Intent to Terminate (NOIT) informing the applicant that his temporary resident status would be terminated because his Form I-698 application was not filed within 43 months after he was granted temporary resident status. However, the applicant failed to overcome the reasons for denial.

On appeal, counsel alleges ineffective assistance of the applicant's former counsel for failing to submit the applicant's Form I-698 via express mail to ensure its arrival by the filing deadline. Counsel submits a brief and additional evidence.

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 his application for permanent resident and the termination of his temporary resident status.

8 C.F.R § 1001.1 Definitions, states in relevant part:

As used in this chapter:

(h) The term *day* when computing the period of time for taking any action provided in this chapter including the taking of an appeal, shall include Saturdays, Sundays, and legal holidays, except that when the last day of the period so computed falls on a Saturday, Sunday or a legal holiday, the period shall run until the end of the next day which is not a Saturday, Sunday, nor a legal holiday.

The applicant was granted temporary resident status on July 20, 2007, and he was required to file his Form I-698 application before the end of the forty-third (43) month from the date of his approval, which fell on February 19, 2011. The record reflects that the applicant's Form I-698 application was filed on February 22, 2011. It is noted, however, that in the year 2011, February 19 fell on a Saturday. Therefore, the statutory deadline would be extended to the next business day. Monday, February 21, 2011 was a holiday which is designated as "Washington's Birthday" in section 6103(a) of title 5 of the United States Code, a holiday for Federal employees. Accordingly, as required under

8 C.F.R § 1001.1(h) the statutory deadline was extended to February 22, 2011, the next business day. In this case, the Form I-698 application was stamped received on February 22, 2011. Accordingly, the Form I-698 was timely filed by the statutory deadline.

Therefore, the director's decision to terminate the applicant's temporary resident status is withdrawn and the appeal is sustained.

ORDER: The appeal is sustained.