

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]

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Date: NOV 23 2012 Office: CHICAGO

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:

[REDACTED]

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.

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

for Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The termination of the applicant's temporary resident status by the Director of the Chicago Field Office is before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant was granted temporary resident status on June 5, 2008, under section 245A of the Immigration and Nationality Act (Act), as amended, 8 U.S.C. § 1255a. 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. The director terminated the applicant's temporary resident status, finding that the applicant had failed to file his Form I-698 within the statutory filing period.

The AAO notes that the applicant sought to file his Form I-698 application on four occasions. In a rejection notice dated May 24, 2011, the director informed the applicant that the check amount he submitted with his Form I-698 was incorrect. The applicant initially sent two checks with his Form I-698, one in the amount of \$1,020 and another in the amount of \$85. After notice of rejection, counsel for the applicant submitted a single check in the amount of \$1,105, which was also rejected. There is no evidence that the director gave the applicant an explanation for the subsequent rejections.

The regulation at 8 C.F.R. § 103.7(b)(1)(FF) states that applicants for adjustment from temporary to permanent resident status (Form I-698) must submit a filing fee in the amount of \$1,020 with the application. The regulation at 8 C.F.R. § 103.7(b)(1)(C) provides that applicants must also submit a biometric fee in the amount of \$85 with applications for adjustment. Here, the applicant sought to submit the proper filing fee (including biometric fee) to the Service before the expiration of the statutory filing period, but the Service rejected the applications. The Service erred in rejecting the applicant's Form I-698 when initially submitted. *The appeal shall be sustained and the temporary resident status of the applicant shall be restored.* The applicant timely filed his Form I-698 application.

**ORDER:** The appeal is sustained.