

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



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Date: **OCT 19 2012**

Office: LOS ANGELES

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.

A handwritten signature in black 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, Los Angeles Field Office is before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director terminated the applicant's temporary resident status, finding the applicant's Form I-698 application for adjustment from temporary to permanent resident status had been denied.¹ The director cited section 245A(b)(2) of the Immigration and Nationality Act (Act) in support of his decision to terminate the applicant's temporary resident status.

On appeal, counsel for the applicant asserts that the applicant timely filed his Form I-698 application. Alternatively, counsel asserts that there are exceptions to the rule regarding filing deadlines. Counsel further asserts that an unpublished AAO decision made an exception to the rule. On appeal, counsel requested a copy of the record of proceedings. The request was processed on April 12, 2012.

The applicant was granted temporary resident status on June 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 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 applicant failed to timely file an application to adjust status from temporary to permanent resident. The 43-month eligibility period for filing for adjustment expired on January 15, 2011.

Untimely filed Form I-698

Counsel for the applicant asserts that the applicant timely filed his Form I-698 by regular U.S. mail within 43 months of being granted temporary resident status. Counsel concedes that the applicant lacks proof of mailing. According to the evidence in the record, the applicant filed a Form I-698 application for adjustment of status from temporary to permanent resident on June 3, 2011. The Form I-698 application was date-stamped on the date of receipt, June 3, 2011. The evidence shows that the Form I-698 application was filed after the 43 month deadline.

Exceptions

Counsel for the applicant asserts that there are exceptions to the rule that applicants must file their Forms I-698 within 43 months of approval of their Forms I-687. Counsel cites that language of the regulation at 8 C.F.R. § 245a.2(u)(1)(iv), indicating that temporary resident status may be terminated at any time (emphasis added). Counsel suggests that the Service has the discretion to terminate or not terminate the applicant's temporary resident status. However, a complete reading

¹ The director of the Los Angeles Field Office denied the applicant's Form I-698 application for adjustment from temporary to permanent resident status, finding the applicant had failed to timely file his Form I-698 application.

of the regulations and the enabling legislation can leave no doubt that the Service must terminate temporary resident status in instances, like the instance case, in which the applicant has failed to establish that he timely filed his Form I-698 application.²

Unpublished decisions

Counsel cites an unpublished AAO decision for the proposition that there is decisional law “tending to allow for late filing.” Counsel’s reliance upon an unpublished decision is without merit. While 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding.

The applicant has failed to overcome the director’s reason for terminating his temporary resident status. The appeal will be dismissed.

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

² Furthermore, the Administrative Appeals Office, like the Board of Immigration Appeals, is without authority to apply the doctrine of equitable estoppel so as to preclude a component part of CIS from undertaking a lawful course of action that it is empowered to pursue by statute or regulation. *See Matter of Hernandez-Puente*, 20 I&N Dec. 335, 338 (BIA 1991). Estoppel is an equitable form of relief that is available only through the courts. The jurisdiction of the Administrative Appeals Office is limited to that authority specifically granted to it by the Secretary of the United States Department of Homeland Security. *See* DHS Delegation Number 0150.1 (effective March 1, 2003); *see also* 8 C.F.R. § 2.1 (2004). The jurisdiction of the AAO is limited to those matters described at 8 C.F.R. § 103.1(f)(3)(E)(iii) (as in effect on February 28, 2003).