

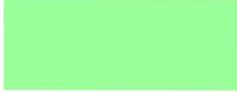
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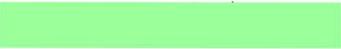
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W. MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

Date: **JAN 16 2013** Office: OKLAHOMA CITY

FILE: 

IN RE: Applicant: 

APPLICATION: Application for Adjustment from Temporary to Permanent Resident Status under 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 black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The application for adjustment from temporary to permanent resident status was denied by the director of the Oklahoma City Field Office. The matter is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded.

On September 18, 2012, the director denied the Form I-698 application, finding the applicant had not filed for adjustment from temporary to permanent resident status within 43 months from the date of approval of his temporary residence application, as required by law. *See* Section 245A(b)(1)(A) of the Immigration and Nationality Act (Act), 8 U.S.C. § 1255a(b)(1)(A). The applicant filed a timely appeal. Counsel for the applicant submitted a brief in support of the appeal.

The applicant was granted temporary resident status on October 25, 2007. The 43-month eligibility period for filing for adjustment to permanent resident status expired on May 25, 2011. The record shows that the I-698 application was received by the United States Citizenship and Immigration Services (USCIS), on November 11, 2011.

On appeal, the applicant asserts that his failure to timely file was due to the ineffective assistance of a notario. The applicant asserts that he believed that a notario had filed the application on his behalf.

There is no remedy available for an applicant who assumes the risk of authorizing an unlicensed attorney or unaccredited representative to undertake representations on its behalf. *See* 8 C.F.R. § 292.1; *see also Hernandez v. Mukasey*, 524 F.3d 1014 (9th Cir. 2008) ("non-attorney immigration consultants simply lack the expertise and legal and professional duties to their clients that are the necessary preconditions for ineffective assistance of counsel claims"). The AAO only considers complaints based upon ineffective assistance against accredited representatives. *Cf. Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988) (requiring an appellant to meet certain criteria when filing an appeal based on ineffective assistance of counsel).

On appeal, counsel for the applicant asserts that the doctrine of equitable tolling is applicable. He asserts that the applicant's late filed Form I-698 should be considered timely filed as the doctrine of equitable tolling would excuse such delay premised on the ineffective representation of the notario who was retained to complete and file the applicant's Form I-698. Counsel cites *Avagyan v. Holder*, 646 F.3d 672 (9th Cir. 2011), as authority for the proposition that the AAO should apply the doctrine of equitable estoppel in the instant case.

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 USCIS 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). Accordingly, the AAO has no authority to address the applicant's equitable estoppel claim.

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 of proceedings does not contain any evidence that the applicant did, in fact, file an I-698 application within the required period of time; therefore, the AAO affirms the director's finding. Nonetheless, this is not a sufficient basis for denying the application.

The appeal cannot be sustained nor is the application approvable. Nonetheless, the matter will be remanded to permit the director to terminate the applicant's temporary resident status¹ and reissue a decision on the instant application on the basis that only temporary residents may adjust to permanent residents under these provisions of the Act.

Finally, on appeal, counsel for the applicant cites to several unpublished AAO decisions for the proposition that late-filed I-698 applications may be approved. 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.

ORDER: The matter is remanded to the director. If the director issues a decision that is adverse to the petitioner, the director shall certify its decision to the AAO.

¹ 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).