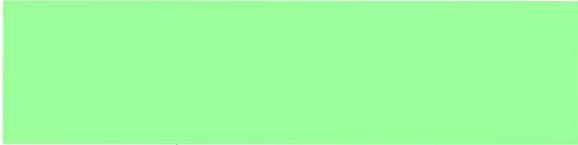


(b)(6)

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: SAN DIEGO

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:

SELF-REPRESENTED

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.

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 San Diego Field Office. The matter is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded.

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. On appeal, the applicant submits a brief.

The applicant was granted temporary resident status on January 3, 2006. The 43-month eligibility period for filing for adjustment to permanent resident status expired on August 3, 2009. The record shows that the I-698 application was received by the United States Citizenship and Immigration Services (USCIS), on February 21, 2010.

On appeal, the applicant asserts that his failure to timely file was due to an injury and illness.

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 status<sup>1</sup> 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.

**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.

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<sup>1</sup> 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).