



U.S. Citizenship
and Immigration
Services

(b)(6)

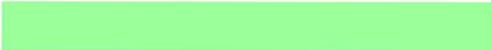


Date: Office: CALIFORNIA SERVICE CENTER FILE:

JAN 23 2013



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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed or rejected, 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.

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The director terminated the applicant's temporary resident status, finding the applicant had filed his Form I-698 application for adjustment from temporary to permanent resident, more than 43 months after his Form I-687 had been approved.¹

The applicant subsequently appealed the director's decision to the Administrative Appeals Office (AAO). On July 28, 2010, the AAO dismissed the appeal as frivolous. The matter is now before the AAO on motion. The motion will be rejected.

On appeal, the applicant requested a copy of the record of proceedings before submitting a brief and additional evidence. His request was processed. [REDACTED] He failed to submit a brief or additional evidence; therefore, the AAO dismissed his appeal.

Now, the applicant asserts that he received only a partial copy of the record of proceedings and could not prepare a brief or evidence in support of his appeal. He states that "only now² did my attorney receive [a copy of] the whole file." The AAO notes that the applicant did not allege that he appealed the Freedom of Information Act/Privacy Act (FOIA) response. He was advised of the opportunity to appeal the FOIA determination in a letter accompanying a copy of the record.

The applicant alleges that he timely filed his Form I-698 application, shortly after he signed the form on May 26, 1992. He offers no evidence in support of his assertion. The Form I-698 was date-stamped as received on February 1, 1993. The record contains a printout titled "case status" stating that the Form I-698 was received on February 1, 1993. The United States Citizenship and Immigration Services (USCIS) data base indicates that the Form I-698 was filed on February 1, 1993, long after his May 30, 1992 deadline.

While the AAO may *sua sponte* reopen on its own motion a matter previously adjudicated, the record reveals no error in the adjudication of either the application for temporary residence or the appeal that would warrant reopening.

Pursuant to 8 C.F.R. § 103.5(b), motions to reopen legalization proceedings under sections 245A of the Immigration and Nationality Act shall not be considered. Therefore, the matter will not be reopened. Accordingly, the motion must be rejected.

ORDER: The motion to reopen is rejected.

¹ The Form I-687 was approved on October 31, 1988.

² Applicant's counsel received a copy of the record on December 12, 2011 [REDACTED]