



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF A-C-J

DATE: DEC. 21, 2015

MOTION OF ADMINISTRATIVE APPEALS OFFICE DECISION

APPLICATION: FORM I-698, APPLICATION TO ADJUST STATUS FROM TEMPORARY TO PERMANENT RESIDENT (UNDER SECTION 245A OF THE INA)

The Applicant, a native and citizen of Mexico, seeks to adjust status from temporary resident to lawful permanent resident. *See* Immigration and Nationality Act (the Act) § 245A, 8 U.S.C. § 1255a. The Director, California Service Center, denied the application and terminated the Applicant's temporary resident status. The Applicant appealed the termination. We rejected the appeal as untimely. The matter is now before us on a motion. We withdraw our previous opinion and remand the matter to the Director for further proceedings consistent with this opinion and for the entry of a new decision, which, if adverse, shall be certified to us for review.

The Director denied the Form I-698, Application to Adjust Status from Temporary to Permanent Resident, on April 13, 2001, finding that the Applicant was statutorily barred from adjustment of status because he did not file Form I-698 within the 43-month period from the date his temporary resident status was approved on April 3, 1992. *See* section 245A(b)(1)(A) of the Act, 8 U.S.C. § 1255a(b)(1)(A). The Director subsequently terminated the Applicant's temporary resident status on November 4, 2004, because the Applicant did not timely file an application for adjustment of status. *See* section 245A(b)(2)(C), 8 U.S.C. § 1255a(b)(2)(C), and 8 C.F.R. § 245a.2(u)(1)(iv). The Applicant appealed the termination of his temporary resident status on December 10, 2004. We rejected the appeal as untimely. On August 23, 2007, the Applicant filed the instant motion to reopen the denial of the Form I-698 and the subsequent termination of his temporary resident status.<sup>1</sup>

The regulations do not permit the filing of a motion to reopen or reconsider a decision rendered in proceedings under section 245A of the Act. *See* 8 C.F.R. § 245a.2(q); 8 C.F.R. § 103.5(b). However, we may reopen and reconsider *sua sponte* any adverse decision where it appears that manifest injustice would occur if the adverse decision were permitted to stand. *See Matter of O-*, 19 I&N Dec. 871 (Comm. 1989).

The Applicant avers that the denial of the Form I-698 and the subsequent termination of his temporary resident status were unjust, because he was unaware of the temporary residence grant until late 1998. For that reason he was unable to comply with the 43-month adjustment application

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<sup>1</sup> We received the motion on July 7, 2015.

period from the date his temporary resident status was granted on April 3, 1992. The Applicant claims that once he obtained the documents from his immigration file confirming his temporary resident status, he timely filed Form I-698 to adjust status to that of a permanent resident on October 26, 1999.

The evidence of the record includes, but is not limited to: briefs submitted in support of the Applicant's appeal and motion, the Applicant's statements, criminal records, affidavits, and travel documents. The entire record was reviewed and considered in rendering this decision.

The record reflects that on May 4, 1988, the Applicant filed Form I-687, Application for Status as Temporary Resident (Under Section 245A of the Immigration and Nationality Act). The Applicant was interviewed in connection with the application on October 12, 1988, and issued a Form I-688, Temporary Resident Card, valid until November 30, 1990. On November 27, 1989, the Applicant was sent a Notice of Intent to Deny his Form I-687, because the evidence he submitted was insufficient to show eligibility for temporary resident status. There is no indication in the record that the Applicant responded to the notice. However, the record reflects that the Applicant's Form I-687 was subsequently approved on April 3, 1992.

Regulations provide that upon grant of an application for adjustment to temporary resident status, the service center must forward a notice of approval to the applicant at his or her last known address and to his or her designated entity or representative. The applicant must then return to any U.S. Citizenship and Immigration Services (USCIS) office to receive a new Form I-688, authorizing employment and travel abroad. *See* 8 C.F.R. § 245a.2(n)(3). The record does not reflect, however, that USCIS notified the Applicant that his Form I-687 was approved.

According to the Applicant's brief submitted on appeal in 2004 and his declaration submitted in 2007, he was unaware that the Form I-687 was approved until he inquired about employment authorization at a local USCIS office in 1998. He claims he was advised to apply for adjustment of status at that time. He did so on October 26, 1999, after he obtained copies of his immigration documents through a Freedom of Information Act (FOIA) request. The record includes internal database records that corroborate the Applicant's claim concerning the timing of his inquiry. In addition, the record contains a letter in response to the Applicant's FOIA request, dated March 29, 1999. The record also contains the Applicant's Form I-698, which was filed on October 26, 1999, and which was denied on April 13, 2001.

To be eligible for adjustment from temporary to permanent resident under section 245A of the Act, an applicant must apply for such adjustment no later than 43 months from the date of the grant of temporary resident status. *See* 8 C.F.R. § 245a.3(b)(1). In this case, the record reflects that the Applicant was granted temporary resident status on April 3, 1992. However, as discussed above, the record does not show that the Applicant was properly notified of the grant as required under 8 C.F.R. § 245a.2(n)(3). It appears that he did not learn that he was granted temporary resident status until after the 43-month application period had already expired. If counted from the time the Applicant learned of the approval of the Form I-687 in late 1998, the filing of his Form I-698 on

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October 26, 1999, falls within the 43-month period allowed by the statute and regulations for filing of an adjustment application under section 245A of the Act.

The evidence indicates that the Applicant was not timely informed of his temporary resident application approval under section 245A of the Act. Given that the Applicant filed Form I-698 within 43 months of learning about his temporary resident status, his Form I-698 should be considered timely filed. As such, it should be adjudicated on merits.

In view of the foregoing, we will reopen the matter *sua sponte*. We will remand the case in order for the Director to withdraw the termination of the Applicant's temporary resident status based on failure to timely file an application for adjustment of status and to adjudicate the Applicant's Form I-698 on the merits.

It appears that the Applicant's Form I-687 was approved despite an initial determination of insufficiency of evidence and that the record does not include the Applicant's response to the Notice of Intent to Deny issued on November 27, 1989. Moreover, the Applicant's fingerprint records reveal criminal history that he did not disclose on Forms I-687 and I-698 and criminal activity occurring after the termination of his temporary resident status. Therefore, additional review is necessary to determine whether termination of the Applicant's temporary resident status may be appropriate on other grounds, as provided in 8 C.F.R. § 245a.2(u)(1), and whether the Applicant is statutorily eligible for adjustment of status from temporary to permanent resident pursuant to section 245A of the Act.

**ORDER:** The decision of the Administrative Appeals Office is withdrawn. The matter is remanded to the Director, California Service Center, for further proceedings consistent with the foregoing opinion and for the entry of a new decision, which, if adverse, shall be certified to us for review.

Cite as *Matter of A-C-J-*, ID# 14946 (AAO Dec. 21, 2015)