



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

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

MATTER OF A-D-F-

DATE: DEC. 22, 2015

APPEAL OF RALEIGH-DURHAM FIELD 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 Portugal, seeks to adjust status from temporary resident to lawful permanent resident. *See* Immigration and Nationality Act (the Act) § 245A, 8 U.S.C. § 1255(a). The Field Office Director, Raleigh-Durham, denied the application. The matter is now before us on appeal. The appeal will be dismissed.

On January 8, 2015, the Director denied the Form I-698 application, finding that the Applicant was ineligible to adjust status because his temporary resident status had been terminated. The Applicant's temporary resident status was terminated because he 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 Act, 8 U.S.C. § 1255a(b)(1)(A).

The Applicant filed his Form I-687, Application for Status as a Temporary Resident under Section 245A of the Act, on January 5, 2006, and his status as a temporary resident was approved on December 3, 2009. The 43-month eligibility period for filing for adjustment to permanent resident status expired on July 3, 2013. The record shows that U.S. Citizenship and Immigration Services (USCIS) received the Applicant's I-698 application on December 2, 2013.

On appeal, the Applicant asserts that the doctrine of equitable tolling is applicable. He asserts that his late filed Form I-698 should be considered timely because the doctrine of equitable tolling would excuse the delay, given the traumatic injuries the Applicant suffered in an accident that caused the delay in filing Form I-698. The Applicant cites *Kuusk v. Holder*, 732 F.3d 302 (4th Cir. 2013), *Harris v. Hutchinson*, 209 F.3d 325 (4th Cir. 2000), and *Holmberg v. Armbrecht*, 327 U.S. 392 (1946), as authority for the assertion that we should apply the doctrine of equitable estoppel in the instant case.

Like the Board of Immigration Appeals, we are 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. Accordingly, we have no authority to address the Applicant's equitable estoppel claim.

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On appeal, the Applicant references his medical condition and additional court decisions in support of the proposition that late-filed I-698 applications may be approved. In effect, the Applicant proposes that the 43-month eligibility period for filing the Form I-698 should be extended in his case due to his medical condition. However, though the Applicant's medical condition is unfortunate, no legal provisions permit extending the 43-month period.

The status of an individual lawfully admitted for temporary residence under section 245A(a)(1) of the Act may be terminated at any time if he or she fails to file for adjustment of status from temporary to permanent resident on Form I-698 within 43 months of the date he or she was granted status as a temporary resident under 8 C.F.R. §245a.1. 8 C.F.R. § 245a.2(u)(1)(iv). The burden to file the adjustment application in a timely manner remains with the Applicant. 8 C.F.R. § 245a.3(d). The record of proceedings does not contain evidence that the Applicant did, in fact, file an I-698 application within the required period of time. As a result, the Applicant's temporary resident status was terminated, making him ineligible to adjust to permanent resident status. Therefore the appeal will be dismissed.

In application proceedings, it is the Applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of A-D-F-*, ID# 13787 (AAO Dec. 22, 2015)