



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

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

MATTER OF S-K-

DATE: FEB. 9, 2016

APPEAL OF KENDALL 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 Pakistan, 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 Director, Kendall Field Office, denied the application. The matter is now before us on appeal. The appeal will be dismissed.

The Director denied the Form I-698, Application to Adjust Status from Temporary to Permanent Resident (under Section 245a of the INA), finding that the Applicant did not qualify for adjustment of status from temporary to permanent resident because his Form I-687, Application for Status as Temporary Resident Under Section 245A of the Immigration and Nationality Act, had been denied.<sup>1</sup>

On appeal, the Applicant asserts that the Director erred in denying his adjustment application. The Applicant claims that he is eligible for adjustment of status from temporary to permanent resident because he was granted temporary resident status on June 6, 1991. According to the Applicant, this temporary status expired on January 1, 1994. The Applicant further states that he did not apply for adjustment of status within 43 months of the date he was granted temporary resident status, because he was unaware of such status until he received copies of the documents from his immigration file in response to his request under the Freedom of Information Act.

8 C.F.R. § 245a.3(b) provides:

Any alien who has been lawfully admitted for temporary resident status under section 245A(a) of the Act, such status not having been terminated, may apply for adjustment of status of that of an alien lawfully admitted for permanent residence.

The Applicant acknowledges that his application for status as temporary resident, which he filed on July 20, 2004, pursuant to section 245A of the Act and CSS/Newman Settlement Agreements,<sup>2</sup> had

<sup>1</sup> The record reflects that the Director denied the Applicant's Form I-687 on September 19, 2014. The denial notice, mailed to the Applicant's address of record on September 25, 2014, advised him of his right to appeal the denial within 30 days of the notice. The record does not indicate that the Applicant appealed the denial of the Form I-687.

<sup>2</sup> *Catholic Social Services, Inc., et al., v. Ridge, et al.*, CIV. NO. S-86-1343-LKK (E.D. Cal) January 23, 2004, and

been denied. The Applicant asserts that he is nevertheless eligible for adjustment to permanent resident status because he had previously been granted status as temporary resident on June 6, 1991.

On November 6, 1986, President Reagan signed into law the Immigration Reform and Control Act of 1986 (IRCA), Pub. L. No. 99-603, § 100 Stat. 3359 (1986). Section 201 of IRCA created a “legalization” program under section 245A of the Act that allowed certain individuals who entered the United States before January 1, 1982, to apply for temporary resident status, and to later adjust status to that of a lawful permanent resident. The legalization program had a one-year application period that began on May 5, 1987, and ended on May 4, 1988. See section 245A of the Act and 8 C.F.R. § 245a.2(a). Subsequently, two class action lawsuits<sup>3</sup> were brought against the Immigration and Naturalization Service (INS)<sup>4</sup> by individuals who claimed that they were discouraged from applying for legalization during the initial application period between May 5, 1987, and May 4, 1988. In both cases the district courts ultimately issued orders invalidating certain INS regulations, and the INS appealed. During the pendency of the appeals, individuals who thought that they qualified as class members in either of the two lawsuits could submit a “skeletal” Form I-687 without a fee, with a completed form for determination of class membership. Individuals who established facially valid class membership claims were granted temporary work authorization and temporary permission to remain in the United States.

The record reflects that on June 6, 1991, the Applicant submitted such a skeletal Form I-687, accompanied by an Affidavit for Determination of Class Membership in *League of United Latin American Citizens v. INS*. Based on this submission, the Applicant was granted authorization to remain and work in the United States until January 1, 1994. The skeletal Form I-687 was submitted solely to determine the Applicant’s class membership eligibility under the pending lawsuits, and not as an application for a merits adjudication of his eligibility for temporary resident status. This Form I-687 was subsequently administratively closed. Accordingly, the record does not establish that the Applicant was granted temporary resident status under section 245A of the Act on June 6, 1991, as he claims. In view of the above, we need not address the Applicant’s argument regarding the filing of his Form I-698 outside of the 43-month eligibility period for filing adjustment of status from temporary to permanent resident.

The record does not reflect that the Applicant was granted temporary resident status pursuant to section 245A of the Act. We conclude, therefore, that the Applicant is not eligible for adjustment of status from temporary to permanent resident status pursuant to 8 C.F.R. § 245a.3(b).

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*Felicity Mary Newman, et al., v. U.S. Immigration and Citizenship Services, et al.*, CIV. NO. 87-4757-WDK (C.D. Cal) February 17, 2004.

<sup>3</sup> These class action lawsuits, involving claims by foreign nationals who were unsuccessful in applying for legalization under the IRCA legalization program, were *Catholic Social Services, Inc. v. Meese, vacated sub nom. Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993); and *League of United Latin American Citizens v. INS, vacated sub nom. Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993).

<sup>4</sup> On March 1, 2003, the INS was abolished and its functions transferred to various agencies within the newly created Department of Homeland Security. Immigration services formerly provided by the INS were transferred to U.S. Citizenship and Immigration Services.

*Matter of S-K-*

In application proceedings, it is the Applicant's burden to establish eligibility for the immigration benefit sought. *See* 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 S-K-*, ID# 15303 (AAO Feb. 9, 2016)