



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

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

MATTER OF J-R-E-

DATE: FEB. 12, 2016

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 Field Office Director, Houston, Texas, denied the application. We summarily dismissed the Applicant's appeal. The matter is again before us on a request to reopen *sua sponte*. We will withdraw our decision dismissing the appeal and reopen the matter *sua sponte*. The matter will be remanded to the Field Office Director 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.

The Director denied the Form I-698, Application to Adjust Status from Temporary to Permanent Resident (under Section 245A of the INA), on March 27, 2014, finding that the Applicant was not eligible for adjustment of status because he did not appear for a fingerprint appointment and did not submit certain evidence to establish eligibility. On May 6, 2014, the Director terminated the Applicant's temporary resident status. The Applicant timely appealed the denial of his Form I-698. In a decision dated April 20, 2015, we summarily dismissed the appeal, finding that the Applicant did not identify specifically any erroneous conclusion of law or statement in the Director's decision. The Applicant filed the instant appeal<sup>1</sup>, but he indicates in the accompanying brief that he seeks a *sua sponte* reopening and reconsideration of our decision to summarily dismiss the appeal. The Applicant submits evidence to attempt to show that he timely had submitted a brief in support of his appeal, but the brief was not included in the record. He submits a copy of the May 22, 2015, brief with his request to have his matter reopened. Accordingly, we withdraw our decision to summarily dismiss the Applicant's appeal and will reopen and reconsider the matter *sua sponte*.

The record reflects that the Applicant was granted temporary resident status pursuant to section 245A of the Act on November 28, 1989. On October 26, 1995, he filed Form I-698 to adjust his status from temporary to permanent resident.<sup>2</sup> The record also indicates that the Applicant was

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<sup>1</sup> We do not exercise appellate jurisdiction over our own decisions. We exercise appellate jurisdiction over only the matters described at 8 C.F.R. § 103.1(f)(3)(iii) (as in effect on February 28, 2003). *See* DHS Delegation Number 0150.1 (effective March 1, 2003).

<sup>2</sup> Section 245A(b)(1)(A) of the Act, 8 U.S.C. § 1255a(b)(1)(A), provides that an individual granted temporary resident status must apply for adjustment to permanent residence within the 43-month period after being granted temporary

scheduled for interviews in connection with the Form I-698 on February 26, 1996, and May 29, 1997, but it is not clear whether the Applicant was interviewed. The record further indicates that no action was taken on the Applicant's Form I-698 between 1997 and 2013.

The regulation at 8 C.F.R. § 245a.3 (e) provides that each applicant for adjustment of status under section 245A of the Act must be fingerprinted for the purpose of issuance of permanent resident card. On December 5, 2013, the Director notified the Applicant that he was required to appear for a fingerprint appointment in connection with the Form I-698. The notice advised the Applicant that his application would be considered abandoned if he failed to appear for the appointment. On the same date, the Director issued a request for evidence (RFE) to establish eligibility for adjustment of status under section 245A of the Act. The notice allowed the Applicant 60 days to respond. The notice also advised the Applicant that his application might be denied if he did not respond within the time period allowed. The Applicant did not respond to the RFE. Pursuant to 8 C.F.R. § 245a.3(d)(6), if a response to a request for additional information and/or documentation is not received within 60 days, a second request for correction, additional information, and/or documentation must be made. On February 20, 2014, the Director issued a notice of intent to deny (NOID) the Form I-698, because the Applicant did not appear for the fingerprint appointment and did not submit the requested documents to establish eligibility for the benefit sought. Again, the Applicant did not respond. If the second request is not complied with, the application for permanent residence must be adjudicated based on the existing record.<sup>3</sup> 8 C.F.R. § 245a.3(d)(6). On March 27, 2014, the Director denied the Applicant's Form I-698 on the basis that the Applicant did not comply with the fingerprinting requirement and he did not establish that he was statutorily eligible for adjustment of status pursuant to section 245A of the Act.

On appeal, the Applicant avers that he did not receive the fingerprint appointment notice or the NOID. The Applicant claims that he only received the denial notice issued by the Director on March 27, 2014.

An addressee is presumed to receive ordinary mail that is properly sent. However, this presumption is weaker than the presumption that applies to documents sent by certified mail. *Matter of M-R-A-*, 24 I&N Dec. 665, 673 (BIA 2008) (respondent in removal proceedings overcame the presumption of delivery of a notice of hearing was sent by regular mail where he submitted affidavits indicating that he did not receive the notice, had previously filed an asylum application and appeared for his first removal hearing, and exercised due diligence in promptly obtaining counsel and requesting reopening of the proceedings). Each case where the presumption of delivery is at issue "must be evaluated based on its own particular circumstances and evidence." *Id.* at 674.

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resident status. The record indicates that the Applicant submitted the Form I-698 before the expiration of the 43-month filing period, but the application was rejected. The Applicant's Form I-698 was subsequently accepted for processing on October 26, 1995, in accordance with the provisions of 8 C.F.R. § 245a.3(d)(6).

<sup>3</sup> The regulation at 8 C.F.R. § 245a.3(d)(6) provides that the request must be complied with by the end of 43 months from the date for temporary residence, Form I-687, was approved, which in this case is June 28, 1993. Because the NOID in this case was issued long after that date, we find that the 30-day period allowed by the Director for a response was reasonable.

The record reflects that the fingerprint appointment notice, the RFE, the NOID, and the denial notice were all properly addressed and mailed to the Applicant at his current address of record by regular mail. The record of proceeding does not contain evidence of returned or undeliverable mail, which might indicate that the Applicant did not receive one or more of the notices mailed to him. However, the Applicant submits a notarized affidavit, in which he claims that he did not receive any notices from U.S. Citizenship and Immigration Services (USCIS) other than the March 27, 2014, denial notice. Further, the Applicant states that he has sometimes received by mistake mail that was addressed to others and that they have received mail that was addressed to him. He asserts that he had no reason to avoid the notices USCIS sent to him, as he has been awaiting the adjudication of his Form I-698 for the past 19 years and is eligible to adjust status under section 245A of the Act. Finally, the Applicant contacted an attorney for assistance in seeking reopening his Form I-698 as soon as he learned that it had been denied. Considering these factors, and in accordance with the reasoning in *Matter of M-R-A-*, *supra*, we conclude that the Applicant has overcome the presumption of delivery. Therefore, we find that reopening of the Applicant's Form I-698 is warranted and remand the matter to the Director for review and adjudication of the reopened Form I-698.

In addition, we will enter a separate finding regarding termination of the Applicant's temporary resident status.<sup>4</sup> Upon review of the record, we find that the Applicant's temporary resident status was improperly terminated.

The record shows that the Director terminated the Applicant's temporary resident status following the denial of his Form I-698. As basis for the termination, the Director referenced part of the regulation at 8 C.F.R. 245a.3(b), which 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 if the alien . . . ."

The regulation the Director cited pertains to adjustment of status from temporary to permanent resident under section 245A of the Act and not termination of temporary resident status. The regulation that governs termination of temporary resident status, 8 C.F.R. 245a.2(u)(1), provides:

*Termination of temporary resident status; General.* The status of an alien lawfully admitted for temporary residence under section 245A(a)(1) of the Act may be terminated at any time in accordance with section 245A(b)(2) of the Act. It is not necessary that a final order of deportation be entered in order to terminate temporary resident status. The temporary resident status may be terminated upon the occurrence of any of the following:

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<sup>4</sup> The termination notice was mailed to the Applicant's address of record on May 6, 2014, by certified mail. According to the information obtained from the U.S. Postal Service website, [www.usps.gov](http://www.usps.gov), the notice was delivered to the Applicant's address on May 9, 2014. However, the notice was left as no authorized recipient was available to receive it.

- (i) It is determined that the alien was ineligible for temporary residence under section 245A of this Act;
- (ii) The alien commits an act which renders him or her inadmissible as an immigrant, unless a waiver is secured pursuant to § 245a.2(k)(2).*[sic]*
- (iii) The alien is convicted of any felony, or three or more misdemeanors;
- (iv) The alien fails to file for adjustment of status from temporary resident to permanent resident on Form I - 698 within forty-three (43) months of the date he/she was granted status as a temporary resident under § 245a.1 of this part.

The record does not establish that the Applicant falls within any of the categories enumerated above. Therefore, termination of the Applicant's temporary resident status pursuant to 8 C.F.R. § 245a.2(u) was not appropriate. Although section 245A(b)(2)(C) of the Act, 8 U.S.C. § 1255a(b)(2)(C), mandates termination of temporary resident status of applicants whose adjustment of status applications have been denied, the Applicant's Form I-698 has now been reopened. Accordingly, as there is no basis for termination of the Applicant's temporary resident status at this time, the Director's decision to terminate the Applicant's temporary resident status is withdrawn.

**ORDER:** The decision of the Administrative Appeals Office is withdrawn. The matter is remanded to the Field Office Director, Houston Field Office 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 J-R-E-*, ID# 15304 (AAO Feb. 12, 2016)