U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF V-G-

DATE: FEB. 18, 2016

APPEAL OF TAMPA 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 Haiti, 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, Tampa, Florida, denied the application. The matter is now before us on appeal. The appeal will be dismissed.

On January 30, 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 could not establish the requisite unlawful residence. The Director noted that the Applicant did not respond to a notice of intent terminate (ITT). In the ITT, the Applicant was notified that he is no longer included within the class of individuals described in section 245A of the Act, because he already had acquired the status of an individual lawfully admitted to the United States for permanent residence; and that in addition, the Applicant did not file his Form I-698 within 43 months from the date of approval of his temporary residence application, as required by law. *See* Section 245A(b)(l)(A) of the Act, 8 U.S.C. § 1255a(b)(l)(A).

On appeal, the Applicant states that he is elderly, that in September 2014 he was hospitalized, and that his mail may have been misplaced or destroyed.

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 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 Applicant filed his Form I-687, Application for Status as a Temporary Resident under Section 245A of the Act, and his status as a temporary resident was approved on January 14, 1993. The record shows that U.S. Citizenship and Immigration Services received the Applicant's I-698 application on November 26, 2012, over 19 years after he was granted temporary resident status. The record of proceedings does not contain evidence that the Applicant filed a Form I-698 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 addition, the record reflects the Applicant was granted lawful permanent resident status as a special immigrant, upon immigrating to the United States on February 18, 1971, and the record lacks evidence showing that he no longer holds that status. The Applicant is therefore not included in the class of individuals described in section 245A of the Act.

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 V-G-*, ID# 14463 (AAO Feb. 18, 2016)