



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

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

MATTER OF J-A-O-R-

DATE: MAR. 29, 2016

APPEAL OF HOUSTON, TEXAS FIELD OFFICE DECISION

APPLICATION: FORM I-698, APPLICATION TO ADJUST STATUS FROM TEMPORARY TO PERMANENT RESIDENT (UNDER SECTION 245A OF PUBLIC LAW 99-603)

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, Houston Texas Field Office, denied the application. The matter is now before us on appeal. The appeal will be summarily dismissed.

On July 6, 2015, the Director denied the Form I-698, Application to Adjust Status from Temporary to Permanent Resident, finding the Applicant was ineligible 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. Section 245A(b)(1)(A) of the Act, 8 U.S.C. § 1255a(b)(1)(A).

On appeal, the Applicant asserts that he was unable to timely file his Form I-698 because he could not afford to pay the filing fee due to a family medical emergency. The Applicant asks for clemency and provides copies of previously submitted evidence with the appeal.

The Applicant is seeking adjustment of status from temporary to permanent resident. 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.

Section 245A of the Act provides, in pertinent part:

(b) Subsequent Adjustment to Permanent Residence and Nature of Temporary Resident Status.-

(1) Adjustment to permanent residence.-The Attorney General [now Secretary of the Department of Homeland Security] shall adjust the status of any alien provided lawful temporary resident status under subsection (a) to that of an alien lawfully admitted for permanent residence if the alien meets the following requirements:

(A) Timely application after one year's residence.-The alien must apply for such adjustment during the 2-year period beginning with the nineteenth month that begins after the date the alien was granted such temporary resident status

....

(f) Administrative and Judicial Review.-

(2) No review for late filings.-No denial of adjustment of status under this section based on a late filing of an application for such adjustment may be reviewed by a court of the United States or of any State or reviewed in any administrative proceeding of the United States Government.

The regulations at 8 C.F.R. § 245a.3(c)(3) further explain that an applicant who was previously granted temporary resident status pursuant to section 245A(a) of the Act who has not filed an application for permanent resident status under section 245A(b)(1) of the Act by the end of 43 months from the date of actual approval of the temporary resident application is ineligible for adjustment of status from temporary to permanent resident.

The record indicates that the Applicant was granted temporary resident status on August 13, 2007, and that the Director sent a notice to the Applicant at his address of record and to counsel reminding them of the requirement to file the Form I-698 within 43 months of the date the Applicant was granted status as a temporary resident under section 245A of the Act. The Applicant filed his Form I-698 on July 26, 2013, more than two years after his March 12, 2011, deadline.

The Applicant's statements on appeal have been considered, and we appreciate the difficulty of his family and financial circumstances in 2011. However, no statutory provision permits administrative review of denials of adjustment of status under section 245A of the Act based on a late filing. Furthermore, the regulations at 8 C.F.R. § 103.3(a)(3)(iv) provide that any appeal which is filed solely on the basis of a denial for not filing the application for adjustment of status under section 245A of the Act in a timely manner must be summarily dismissed.

As the Applicant filed the appeal solely on the basis of denial for untimely filing the application for adjustment of status under section 245A of the Act, we must summarily dismiss the appeal.

The Applicant has the burden of proving eligibility for adjustment of status from temporary to permanent resident. Section 291 of the Act, 8 U.S.C. § 1361. The Applicant has not met that burden. Accordingly, we dismiss the appeal. This decision constitutes a final notice of ineligibility.

ORDER: The appeal is summarily dismissed pursuant to 8 C.F.R. § 103.3(a)(3)(iv).

Cite as *Matter of J-A-O-R-*, ID# 16983 (AAO Mar. 29, 2016)