



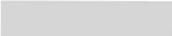
U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: **APR 20 2015**

Office: TEXAS SERVICE CENTER

FILE: 

IN RE:

Applicant:   


APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a.

ON BEHALF OF APPLICANT: Self-represented

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

Thank you,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The termination of the applicant's temporary resident status by the Director, Texas Service Center, and the matter shall be treated as an appeal before the Administrative Appeals Office (AAO). The appeal will be sustained.

The applicant was granted temporary resident status on October 20, 2008 under section 245A of the Immigration and Nationality Act (Act), as amended, 8 U.S.C. § 1255a. The applicant was required to file an application to adjust status from temporary to permanent resident within forty-three (43) months of receiving his temporary resident status. *See* 8 C.F.R. § 245a.3(b)(1). Pursuant to section 245A(b)(2)(C) of the Act, 8 U.S.C. § 1255a(b)(2)(C), a failure to file an application for adjustment to permanent residence within this statutory filing period will result in the termination of the applicant's temporary residence.

The record reflects that the director issued a Notice of Intent to Terminate (NOIT) the temporary resident status on April 25, 2014, as it was determined that the applicant had not filed an Application to Adjust Status From Temporary to Permanent Resident (Form I-698) within 43 months from the date of the approval of the temporary resident application. The director noted that as the application for temporary resident was approved on October 20, 2008, the applicant was required to file a Form I-698 by May 20, 2012.<sup>1</sup> The director granted the applicant thirty-three (33) days to offer evidence of compliance or in the alternative evidence that his failure to submit his application was beyond his control and due to emergent reasons. The director determined that the applicant did not respond to the NOIT, and on June 30, 2014, issued his decision terminating the applicant's temporary resident status finding that the applicant had abandoned the application pursuant to 8 C.F.R. § 103.2(b)(13). The director advised the applicant that, while the decision could not be appealed, the applicant could file a motion to reopen or reconsider.

The record, however, indicates that the applicant did respond to the NOIT and his response was received at the Texas Service Center on May 28, 2014.<sup>2</sup> The director also erred in terminating temporary residence based on abandonment.<sup>3</sup> The director's decision will therefore be withdrawn, and we will consider the applicant's response to the NOIT, and make a *de novo* decision based on the record and our assessment of the credibility, relevance and probative value of the evidence.<sup>4</sup>

<sup>1</sup> The director's calculation is incorrect as the 43<sup>rd</sup> month to file the Form I-698 ended on December 19, 2011.

<sup>2</sup> The applicant's response was sent via certified mail and the U.S. Postal Service tracking information indicates that it was delivered at 5:20 a.m. on May 28, 2014.

<sup>3</sup> On December 14, 2009, the United States District Court for the Eastern District of California ruled that United States Citizenship and Immigration Services (USCIS) may not apply its abandonment regulation, 8 C.F.R. § 103.2(b)(13), in adjudicating legalization applications filed by CSS class members. *See, CSS v. Michael Chertoff*, Case 2:86-cv-01343-LKK-JFM.

<sup>4</sup> The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004); *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

In response to the NOIT, the applicant indicated that since June 15, 2007, he had not received any notification from U.S. Citizenship and Immigration Services (USCIS); that in 2008 he had moved and provided USCIS with his new address; that on several occasions he visited the [REDACTED] Office to inquire about his status and was informed "to keep waiting". Along with his response, the applicant submitted: (1) copies of his employment authorization cards valid from August 20, 2008 through September 13, 2013; (2) a Form I-698; and (3) supporting documents in an attempt to establish continuous residence in the United States from the date he was approved temporary resident status.

At the time the applicant was approved temporary resident status, an approval notice dated October 20, 2008, was sent to the applicant advising him of the requirement to file a Form I-698 before the end of the forty-third (43) month from the date of his approval. This notice, however, was sent to the applicant's old address as USCIS electronic records reflect that the applicant had submitted a change of address on September 9, 2008.

It is not known what may or may not have transpired during the applicant's visits to the Los Angeles Office nevertheless, a check of the USCIS electronic records would have provided the approval date of the Application for Status as a Temporary Resident (Form I-687). The fact that the applicant continued to obtain employment authorization through September 13, 2013 under category C22<sup>5</sup> implies that the applicant was not aware and had not been advised that he had been approved temporary resident status.

The record reflects that a Service error prevented the applicant from receiving the approval notice at his correct address of record. Due to this error, we find that the applicant timely filed the Form I-698 adjustment application.<sup>6</sup> We, therefore, withdraw the termination of the applicant's temporary resident status and his status as a temporary resident shall be restored. The director shall complete the adjudication of the Form I-698 adjustment application.

**ORDER:** The appeal is sustained.

<sup>5</sup> Employment authorization is granted during the period that the legalization application is pending.

<sup>6</sup> The Form I-698 was filed on July 3, 2014.