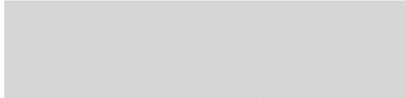




**U.S. Citizenship  
and Immigration  
Services**

(b)(6)



DATE: **AUG 3 1 2015**

FILE #: [REDACTED]  
APPLICATION RECEIPT #: [REDACTED]

IN RE: Applicant: [REDACTED]

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:

NO REPRESENTATIVE OF RECORD

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

Thank you,

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

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Field Office Director, Oklahoma City Field Office, terminated the applicant's temporary resident status. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director terminated the applicant's temporary resident status, finding that the applicant failed to apply for adjustment to permanent resident status within 43 months of approval of the application for temporary resident status.

On appeal, the applicant states that he did not receive information stating that he must apply for adjustment to permanent resident status within 43 months, and that he applied for renewal of his temporary work authorization card within three months of the expiration of the card according to the instructions on the card.

Section 245A(b)(2) of the Act states, in pertinent part:

Termination of temporary residence. – The Attorney General [now Secretary of Homeland Security] shall provide for termination of temporary resident status granted an alien under subsection (a) –

....

(C) at the end of the 43rd month beginning after the date the alien is granted such status, unless the alien has filed an application for adjustment of such status pursuant to paragraph (1) and such application has not been denied.

The corresponding regulation at 8 C.F.R. § 245a.2(u)(1)(iv) provides that the status of an alien lawfully admitted for temporary residence under section 245A(a)(1) of the Act may be terminated at any time if “[t]he 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[.]” The applicant bears the burden to timely file the application for adjustment from temporary to permanent resident status within the prescribed 43-month period. *See* 8 C.F.R. § 245a.3(b)(1). The statute and regulations do not allow a waiver of untimely filing.

The record in this case shows that the applicant was granted temporary resident status under section 245A(a)(1) of the Act on January 25, 2007. The applicant did not file a Form I-698, Application to Adjust Status from Temporary to Permanent Resident, until October 26, 2010, over two months after his prescribed 43-month filing period had expired. On appeal, the applicant does not claim or submit evidence that he filed a Form I-698 within the prescribed period.

The applicant failed to file an application for adjustment of status by the end of the 43rd month after he was granted temporary resident status. Accordingly, his status was properly terminated pursuant to section 245A(b)(2) of the Act and the corresponding regulation at 8 C.F.R. § 245a.2(u)(1)(iv). In his October 7, 2014, decision, the director properly set forth this valid basis for termination of the applicant's status. The applicant's statements on appeal fail to overcome the basis for the termination.

As stated in 8 C.F.R. § 103.3(a)(3)(iv)(B), any appeal which is filed solely on the basis of a denial for failure to file the application for adjustment of status under section 210 or 245A in a timely manner, will be summarily dismissed.

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. This decision constitutes a final notice of ineligibility.