



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

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

MATTER OF A-S-

DATE: JAN. 29, 2016

APPEAL OF NATIONAL BENEFITS CENTER DECISION

APPLICATION: FORM I-687, APPLICATION FOR STATUS AS A TEMPORARY RESIDENT UNDER SECTION 245A OF THE IMMIGRATION AND NATIONALITY ACT

The Applicant is a citizen and national of Mexico, who was previously granted temporary resident status. *See* Immigration and Nationality Act (the Act) § 245A, 8 U.S.C. § 1255a. The Director, National Benefits Center, terminated the Applicant's temporary resident status. The matter is before us on appeal. The appeal will be dismissed.

The Director terminated the Applicant's temporary resident status because the Applicant did not apply for adjustment from temporary to permanent resident within the 43-month application period, as required.

On appeal, the Applicant asserts that the termination of his temporary resident status by U.S. Citizenship and Immigration Services (USCIS) was not timely. In addition, the Applicant claims that he is not subject to temporary resident status termination because the Immigration and Customs Enforcement agency maintained in removal proceedings that he is a lawful permanent resident. The Applicant indicates on his Form I-694, Notice of Appeal of Decision Under Section 210 or 245A, that he would submit a brief supporting his position within 30 days. However, to date we have not received additional documents or statements in support of the Applicant's appeal. The record, therefore, is considered complete as of the date of this decision.

The record includes, but is not limited to, documents establishing the Applicant's identity, letters from family members and employers, financial documentation, and criminal records. The entire record was reviewed and considered in rendering this decision.

Section 245A(b)(2) of the Act, 8 U.S.C. § 1255a(b)(2), states, in pertinent part:

Termination of temporary residence. - The Attorney General [now Secretary of the Department 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) further 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:

...

(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.

An 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 legalization program established by section 245A of the Act provides for a grant of legal status to individuals who entered the United States prior to January 1, 1982, and have resided continuously in the United States in an unlawful status since that date. Obtaining legal status pursuant to section 245A of the Act is a two-step process. The first step is the adjustment of status of the individual to that of a lawful temporary resident. 8 C.F.R. § 245a.2. Following a period of 18 months in such status, the temporary resident may take the second step and apply for adjustment of status to that of a lawful permanent resident. 8 C.F.R. § 245a.3(a)(1).

The record in this case shows that the Applicant was granted temporary resident status pursuant to section 245A of the Act on January 22, 1988. The record does not indicate that the Applicant took the second step in the legalization process by filing Form I-698, Application to Adjust Status from Temporary to Permanent Resident. Moreover, the record does not indicate that the Applicant has ever held any status in the United States other than that of a temporary resident.

Subsequent to the grant of temporary resident status, the Applicant was convicted of several criminal offenses and placed in removal proceedings. The Form I-862, Notice to Appear, issued on April 6, 2012, erroneously identified the Applicant as a lawful permanent resident whose status was adjusted

under section 245(a) of the Act.¹ The Applicant was subsequently granted cancellation of removal pursuant to section 240A(a)² of the Act, 8 U.S.C. § 1229b(a), by an immigration judge on December 6, 2013.

On April 29, 2015, the Director terminated the Applicant's temporary resident status under section 245A(b)(2) of the Act, because the Applicant did not apply for adjustment of status from temporary to permanent resident status within 43 months of the temporary resident status grant.

Although the regulation at 8 C.F.R. § 245a.2(u)(1)(iv) provides that an individual's temporary resident status may be terminated "at any time," the Applicant asserts on appeal that the termination of his temporary resident status by USCIS was untimely. The Applicant submits no explanation or evidence in support of this assertion. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

In addition, the Applicant states that USCIS is precluded from terminating his temporary resident status because he was recognized in removal proceedings as a lawful permanent resident. As discussed above, the allegation in Form I-862 pertaining to the Applicant's status as a lawful permanent resident was in error. The record lacks evidence showing that the Applicant's status was ever adjusted to that of a permanent resident either under section 245A of the Act or section 245(a) of the Act. The Applicant has not submitted any evidence on appeal to show that he had been granted permanent resident status under any provision of the Act. The fact that the Applicant was granted cancellation of removal is not binding on USCIS with respect to temporary resident status termination proceedings under section 245A(b)(2) of the Act. *See* 8 C.F.R. § 245a.2(u)(1)(iv). In addition, while the government bears the burden of proof to establish an individual's removability in removal proceedings, in termination of temporary resident status proceedings before USCIS, the Applicant bears the burden of proof to offer evidence in opposition to the grounds alleged for termination of his or her status. *See* 8 C.F.R. § 245a.2(u)(2)(i).

The Applicant did not file an application for adjustment of status by the end of the 43-month period after he was granted temporary resident status. Therefore, 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). The Applicant's statements on appeal, without evidence to support them, do not overcome the basis for the termination of his temporary resident status.

¹ Section 245(a) of the Act, 8 U.S.C. § 1255(a), provides for adjustment of status of individuals who were inspected and admitted or paroled into the United States and for whom visa numbers are available. Although the record shows that the Applicant is the beneficiary of an approved Form I-130, Petition for Alien Relative, the record does not indicate that the Applicant applied for, or was granted, adjustment of status under section 245(a) of the Act.

² Section 240A(a) of the Act provides for cancellation of removal of certain permanent residents who have been lawfully admitted for permanent residence for not less than five years, who have resided in the United States continuously for seven years after having been admitted in any status, and who have not been convicted of an aggravated felony.

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In application proceedings, it is the Applicant's burden to establish eligibility for the immigration benefit sought. *See* 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 A-S-*, ID# 15286 (AAO Jan. 29, 2016)