

Identifying information related to
provision of benefits requested
invasion of personal privacy

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529 - 2090

CONFIDENTIAL



U.S. Citizenship
and Immigration
Services

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[Redacted]

Date: DEC 28 2011

Office: NATIONAL BENEFITS CENTER

FILE:

[Redacted]

IN RE:

Applicant:

[Redacted]

APPLICATION:

Application for Adjustment from Temporary to Permanent Resident Status under
Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:

[Redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. You no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case. If your appeal was sustained or remanded for further action, you will be contacted.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application for adjustment from temporary to permanent resident status was denied by the director of the National Benefits Center. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application, finding that the applicant is ineligible to adjust from temporary to permanent resident status because his temporary resident status was terminated.

On appeal, the applicant asserts that the decision of the director was in error. The applicant has not submitted any further documents on appeal, regarding the denial of the I-698 application.¹

The regulation at 8 C.F.R. § 245a.3(b) provides:

Any alien who has been lawfully admitted for temporary resident status under section 245A of the Act, such status not having been terminated, may apply for adjustment of status to that of an alien lawfully admitted for permanent residence.

The applicant's temporary resident status was terminated on October 30, 2008.² The director determined that, pursuant to the above cited regulation, the applicant is no longer eligible to apply for permanent resident status because his temporary resident status was terminated. On appeal, the applicant first asserts that he never received notification that his temporary resident status was terminated. However, a review of the record reveals that on November 20, 2008, the applicant signed a Form I-694, notice of appeal, appealing the decision to terminate his temporary resident status to the AAO, which was appeal was dismissed. In addition, on March 15, 2010, the applicant signed a request that the AAO reopen the I-687 application, which motion was rejected. Based upon the foregoing, the AAO does not find the applicant's assertion, that he never received notification of the termination of his temporary resident status, to be credible. Second, counsel asserts that the applicant relied to his detriment on prior attorneys, with the result that the applicant did not understand that his temporary resident status was terminated. It is noted that any appeal based upon a claim of ineffective assistance of counsel requires: (1) that the claim be supported by an affidavit of the allegedly aggrieved respondent setting forth in detail the agreement that was entered into with counsel with respect to the actions to be taken and what representations counsel did or did not make to the respondent in this regard, (2) that counsel whose integrity or competence is being impugned be informed of the allegations leveled against him and be given an opportunity to respond, and (3) that the appeal or motion reflect whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of counsel's ethical or legal responsibilities, and if not, why not. *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988). The applicant has not submitted any of the required documentation to support an appeal based on ineffective assistance of counsel. Therefore, the applicant is found not to have established a claim of ineffective assistance of counsel. Third, the applicant has addressed the basis for the termination of his temporary resident status. However, the instant appeal is related to the denial of his application for permanent residence. Based on all of the above, the appeal must be dismissed.

¹ The AAO notes that the documents that the applicant submits on appeal, which have previously been submitted into the record, pertain to the termination of his temporary resident status, and are, thus, not relevant to the denial of the I-698 application.

² The director of the Los Angeles office terminated the applicant's temporary residence status, based on both a lack of documentation and inconsistent documentation in the record of proceedings.

As stated in 8 C.F.R. §103.3(a)(3)(iv), any appeal which is filed that fails to state the reason for appeal, or is patently frivolous, will be summarily dismissed.

A review of the decision reveals the director accurately set forth a legitimate basis for denial of the application. On appeal, the applicant has not credibly addressed the grounds stated for denial, nor has he presented additional evidence relevant to the grounds for denial or the stated reason for appeal. The appeal must therefore be summarily dismissed.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.