



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

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

In Re: 20466864

Date: APR. 8, 2022

Appeal of San Bernardino Field Office Decision

Form I-687, Application for Status as a Temporary Resident

The Applicant, a native and citizen of Guatemala, seeks status as a temporary resident pursuant to section 245A of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1255a.¹ The Immigration Reform and Control Act of 1986 created a legalization program under section 245A of the Act, which allows eligible foreign nationals who entered the United States before January 1, 1982, and who continuously resided and were physically present in the United States during specified time periods, to adjust status to temporary residence, if they are admissible to the United States and have not been convicted of a felony or three or more misdemeanors in the United States.

In 1988, the Applicant filed a Form I-687, Application for Status as a s Temporary Resident (Under Section 245A of the Immigration and Nationality Act) that was approved in 1989, adjusting his status to a temporary resident. After the Applicant's adjustment to temporary resident status, the Director of the San Bernardino Field Office terminated his status. The Applicant has appealed that decision this office. We review the questions in this matter *de novo*. *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 245A of the Act provides that after a foreign national is granted temporary resident status under this program, if they meet certain conditions, USCIS may adjust their status from a temporary nature to that of a lawful permanent resident. *Id.* at 245A(b)(1)(A)–(D). One of those conditions is that an applicant file to adjust to lawful permanent resident status before “the end of the 43rd month [that is calculated] beginning after the date the alien is granted [temporary resident] status, unless the alien has filed an application for adjustment of such status pursuant to paragraph (1) and such application has not been denied.” Section 245A(b)(2)(C) of the Act; *see also* 8 C.F.R. § 245a.3(b)(1) (reiterating the timeframe for eligibility).

¹ In addition to section 245A of the Act, there are settlement agreements in *Catholic Social Servs., Inc. v. Ridge*, CIV. NO. S-86-1343-LKK (E.D. Cal) January 23, 2004, and *Newman v. USCIS*, CIV. NO. 87-4757-WDK (C.D. Cal) February 17, 2004 (CSS/Newman Settlement Agreements) and the settlement agreement in *Northwest Immigrant Rights Project v. USCIS*, 88-CV-00379 JLR (W.D. Was) September 9, 2008 (NWIRP Settlement Agreement).

The regulation reiterates that a foreign national 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 of that of an alien lawfully admitted for permanent residence.” 8 C.F.R. § 245a.3(c)(3). In such cases, the statute provides for the termination of the foreign national’s temporary resident status. Section 245A(b)(2)(C) of the Act; 8 C.F.R. § 245a.2(u)(1)(iv). The process of terminating a foreign national’s temporary resident status is described within the regulation at 8 C.F.R. § 245a.2(u)(2). In these proceedings, the Applicant bears the burden of demonstrating eligibility by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

II. ANALYSIS

The Applicant was granted temporary resident status on July 6, 1989, and the Director issued a notice that he was required to file a Form I-698, Application to Adjust Status from Temporary to Permanent Resident (Under Section 245A of Public Law 99-603), before the end of the 43-month period that began on the date he was granted temporary resident status. Therefore, the Applicant was required to file the Form I-698 in February 1993. The Applicant did not file Form I-698 until March 1994. The Director determined that the Applicant failed to file the Form I-698 within the requisite 43-month period, and thus denied that application. The Director’s decision noted that in December 1995, legacy Immigration and Naturalization Service issued a notice of intent to terminate the Applicant’s temporary resident status and afforded him 30 days in which to respond to the notice. The Director found that the Applicant did not respond to the notice within the allotted timeframe and terminated his temporary resident status.

On appeal, the Applicant notes that his temporary resident status was not terminated at the end of the 43-month period in February 1993. He further states that because the former Immigration and Naturalization Service did not terminate his temporary resident status before the date he filed the Form I-698, that the Form I-698 should have still been considered to be timely filed because his temporary status was not terminated until August 2021.²

The Applicant correctly notes that his temporary resident status was not terminated at the end of the 43-month period in February 1993. The Director’s notice issued on August 9, 2021, terminated that status. The Applicant argues that because the termination of his temporary status had not been finalized when he filed his Form I-698, his filing of the form complied with the requirements to adjust status from a temporary to a permanent resident status. This argument is unavailing. Although a foreign national must have been granted temporary resident status under section 245A of the Act in order to adjust status, they must still timely file the Form I-698. *See* 8 C.F.R. § 245a.3(b)(1) (listing one eligibility factor for adjustment from temporary to permanent resident status as filing the Form I-698 on or before the end of 43 months from the date of approval of the temporary resident application). The Applicant did not file his Form I-698 by the end of the 43-month period after he

² We note that although the Applicant indicates that an additional brief would follow the filing of his appeal, he has not provided any such brief as of the issuance of this decision.

was granted temporary resident status. Therefore, his status was properly terminated pursuant to section 245A(b)(2) of the Act and 8 C.F.R. § 245a.2(u)(1)(iv).

ORDER: The appeal is dismissed.