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

A1



FILE:



Office: CALIFORNIA SERVICE CENTER

Date: OCT 31 2006

WAC 05 017 52409

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:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The termination of temporary resident status by the Director, California Service Center, is before the Administrative Appeals Office on appeal. The appeal will be rejected.

The director terminated the applicant's status because the applicant failed to file the Form I-698, Application for Adjustment of Status from Temporary to Permanent Resident, within the 43-month application period.

An alien may appeal a decision to terminate his temporary resident status to the Administrative Appeals Office. Any appeal with the required fee shall be filed with the service center within thirty (30) days after service of the notice of termination. 8 C.F.R. § 245a.2(u)(2)(i). An appeal received after the thirty day period has tolled will not be accepted. 8 C.F.R. § 103.3(a)(3)(iv)(C). Whenever a person has the right or is required to do some act within a prescribed period after the service of a notice upon him and the notice is served by mail, three days shall be added to the prescribed period. Service by mail is complete upon mailing. 8 C.F.R. § 103.5a(b).

The director issued a Notice of Termination on February 5, 2005,¹ and mailed it to the applicant at his address of record. The notice was returned by the post office as unclaimed. The envelope indicates that the post office provided the applicant at least two opportunities to acquire the notice before it was returned to the California Service Center. Therefore, the applicant's failure to receive the Notice of Termination was of his own making. The California Service Center received the appeal on July 27, 2005, over five months after the decision was issued. The appeal was untimely filed and, therefore, must be rejected.

ORDER: The appeal is rejected.

¹ The director inadvertently dated the Notice of Termination February 4, 2004.