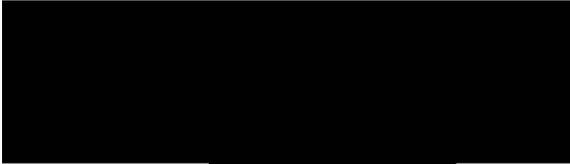


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prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services



L1

FILE:



XPS-80-601-06152

Office: Texas Service Center

Date:

NOV 06 2006

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. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, 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.

A handwritten signature in cursive script that reads "M. Wiemann".

Handwritten initials "R" followed by the typed name and title: Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The applicant's temporary resident status was terminated by the Director, Texas Service Center. The matter is now before the Administrative Appeals Office on appeal. The appeal will be rejected.

The director terminated the applicant's status because the applicant had failed to file the application for adjustment to permanent resident status within the requisite 43-month period.

An adverse decision on an application for temporary resident status may be appealed 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 denial. An appeal received after the thirty-day period has tolled will not be accepted. *See* 8 C.F.R. § 245a.2(p). Whenever a person has the right or is required to do some act within a prescribed period after the service of 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 the notice of termination on July 20, 2005, and mailed it to the applicant's address of record. In the notice, the director stated: "You may submit within thirty (30) days after receipt of this notice, Form I-694, Notice of Appeal, in triplicate, to file the appeal. The appeal must be accompanied with the appropriate fee and a brief or other written statement for consideration by the reviewing authority." The instructions to the Form I-694 stated: "A fee of one hundred and five dollars (\$105.00) must be paid for filing this appeal."

Every application, petition, appeal, motion, request, or other document submitted on the form prescribed by this chapter shall be executed and filed in accordance with the instructions on the form, such instructions (including where an application or petition should be filed) being hereby incorporated into the particular section of the regulations in this chapter requiring its submission. 8 C.F.R. § 103.2(a)(1). Thus, the applicant was required by regulation to file a timely appeal with the correct payment if he wanted his appeal to be considered. The appeal was received on August 31, 2005, 42 days after the issuance of the termination notice, accompanied by an incorrect fee of \$50.00. Therefore, the appeal cannot be considered to have been properly, timely filed. On August 31, 2005, the appeal was mailed back to the applicant with a notice advising him of the correct fee. The appeal was next received from the applicant on September 19, 2005. The appeal was untimely filed, and must be rejected.

ORDER: The appeal is rejected.