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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
 XLB 88 136 02112

Office: CALIFORNIA SERVICE CENTER

Date: NOV 09 2006

IN RE: Applicant: [REDACTED]

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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

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 (AAO) 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.

The regulation at 8 C.F.R. § 103.3(a)(1)(iii) states, in pertinent part:

(B) *Meaning of affected party.* For purposes of this section and §§ 103.4 and 103.5 of this part, *affected party* (in addition to the Service) means the person or entity with legal standing in a proceeding. It does not include the beneficiary of a visa petition.

In the instant case, there is no Form G-28, Entry of Appearance as Attorney or Representative on file. As such, [REDACTED] who assisted in filing the Form I-694, Notice of Appeal, has no standing in this proceeding.

Accordingly, pursuant to 8 C.F.R. § 292.4(a), the AAO sought to clarify whether Ms. [REDACTED] is authorized to represent the applicant in this proceeding. On October 3, 2006, a letter was sent to Ms. [REDACTED] requesting that evidence be submitted establishing her eligibility to appear either as an attorney or as an accredited representative of an organization recognized and accredited by the Board of Immigration Appeals. Ms. [REDACTED] was given 15 days in which to submit the requested documentation. To date, however, no correspondence has been presented.

As there is nothing in the record that demonstrates that Ms. [REDACTED] is authorized to act on the applicant's behalf, Ms. [REDACTED] will not be recognized in this proceeding.

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 regulation at 8 C.F.R. § 103.2(a)(7)(i) provides that an application or petition that is submitted with the wrong filing fee shall be rejected as improperly filed.

The director issued the Notice of Termination on January 3, 2005, and mailed it to the applicant's address of record. The appeal was initially received by the California Service Center on January 26, 2005; however, it was rejected because the applicant submitted an incorrect fee. The appeal with the correct fee was received by the California Service Center on March 5, 2005, 59 days after the director's decision. Accordingly, the appeal was untimely filed, and must be rejected.

ORDER: The appeal is rejected.