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



U.S. Citizenship
and Immigration
Services

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PUBLIC COPY



FILE: [REDACTED]
WAC 94 117 52403

Office: CALIFORNIA SERVICE CENTER

Date: NOV 22 2006

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Adjustment from Temporary to Permanent Resident Status pursuant to 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. 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 black ink, appearing to read "R. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for adjustment from temporary to permanent resident status was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The director determined that the applicant was ineligible to adjust from temporary to permanent resident because the applicant's temporary resident status had been terminated, and the applicant was therefore not eligible for adjustment to permanent resident status. The director had terminated the applicant's temporary resident status because the applicant had failed to assist the Immigration and Naturalization Service or the Service (now Citizenship and Immigration Services of CIS) in providing requested court documents relating to his criminal history as required under 8 C.F.R. § 245a.3(g)(5).

An adverse decision on an application to adjust from temporary to permanent 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 or termination. An appeal received after the thirty-day period has tolled will not be accepted. *See* 8 C.F.R. § 245a.3(j). 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) provides that an application or petition which is submitted with the wrong filing fee shall be rejected as improperly filed.

The record reflects that the director sent the decision of November 1, 2004 to both the applicant and counsel at each of their respective addresses of record. The director correctly indicated on the notice of decision that the fee to file an appeal on Form I-694 is \$105.00. While the appeal fee had been \$50.00, that fee was increased to \$105.00 effective April 30, 2004. *See* 69 Fed. Reg. 20528, 20532 (April 15, 2004).¹

Counsel initially submitted the Form I-694 appeal on the applicant's behalf on December 1, 2004; however, it was rejected because counsel submitted an incorrect fee. The appeal was filed with the correct fee of \$105.00 on December 10, 2004, 39 days after the director's decision. Therefore, the appeal was untimely filed, and must be rejected.

ORDER: The appeal is rejected as untimely filed.

¹ Effective October 26, 2005, the filing fee for Form I-694 is now \$110. *See* 70 Fed. Reg. 56182, 56184 (Sept. 26, 2005).