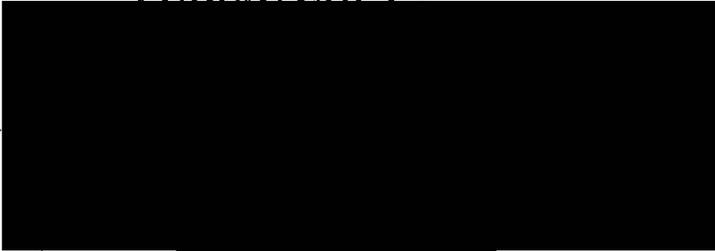


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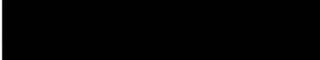
U.S. Citizenship
and Immigration
Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: OCT 04 2006

WAC 03 165 50348

IN RE:

Applicant:



APPLICATION:

Application for Adjustment from Temporary to Permanent 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 application for adjustment from temporary to permanent resident status was denied by the District Director San Francisco, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected. The AAO will return the matter for further action by the director.

The district director concluded that the applicant had been convicted of at least three misdemeanors in the United States, and accordingly, denied the application.

An adverse decision on an application for adjustment to permanent resident status may be appealed to the Administrative Appeals Office. Any appeal shall be submitted to the Service Center with the required fee 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. The thirty-day period for submitting an appeal begins three days after the notice of denial is mailed. 8 C.F.R. § 245a.3(j).

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 district director issued the Notice of Denial on December 22, 2004, and mailed it to the applicant's address of record. While the director indicated that the fee to file an appeal on Form I-694 is \$50.00 in the Notice of Denial, that fee was increased to \$105.00 effective April 30, 2004. *See* 69 Fed. Reg. 20528, 20532 (April 15, 2004) and 8 C.F.R. § 103.7(b)(3).¹ The director's Notice of Denial was issued more than seven months after the fee increase took effect.

The appeal was initially received by the California Service Center on January 20, 2005; however, it was rejected because the applicant submitted an incorrect fee of \$50.00 pursuant to the instructions of the director. The appeal was filed with the correct fee of \$105.00 on February 5, 2005, 45 days after the director's decision. Accordingly, the appeal was untimely filed, and must be rejected.

The untimely filing appears to be due to the director's incorrect advice. It is noted that, pursuant to 8 C.F.R. § 245a.2(q), the director may *sua sponte* reopen any adverse decision. Additionally, the director may certify any such decision to the AAO. *See* 8 C.F.R. § 245a.2(r).

ORDER: The appeal is rejected.

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