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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:

XLB 88 137 02084

Office: CALIFORNIA SERVICE CENTER

Date:

OCT 03 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:



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 the applicant's temporary resident status by the Director, California Service Center, is 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 director terminated the applicant's temporary resident 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 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 or termination. 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 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 that is submitted with the wrong filing fee shall be rejected as improperly filed.

The director issued the Notice of Termination on August 29, 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 Termination, 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 Termination was issued four months after the fee increase took effect.

The Form I-694 appeal was initially received by the California Service Center on September 24, 2004; 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 October 7, 2004, 39 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).