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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

41



FILE: [REDACTED]
XBK 88 142 05014

Office: VERMONT SERVICE CENTER

Date: OCT 12 2006

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Temporary Resident Status under 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. 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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The termination of the applicant's temporary resident status by the Director, Vermont 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 record reflects that the director sent the notice of termination dated July 18, 2005 to the applicant at his 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).¹ The director's notice of termination was issued on July 18, 2005, more than 14 months after the fee increase took effect.

The applicant submitted Form I-694 appeal on August 17, 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 August 30, 2005, 43 days after the director's decision. Therefore, 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).

We note that the record reflects that on August 30, 1986, the applicant was charged by the New York City police department with criminal impersonation of another and aggravated unlicensed operation of a vehicle. Case number [REDACTED] The record does not reflect a final disposition of these charges.

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).