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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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[REDACTED]

FILE:

[REDACTED]

Office: TEXAS SERVICE CENTER

Date: JAN 25 2007

XDA-88-004-4072

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:

[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 or rejected, 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 application for temporary resident status was denied by the Director, Southern Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be rejected.

The director denied the application because the applicant failed to report for the required temporary residence (legalization) interview.

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. 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 director issued and mailed the notice of denial on March 12, 1993. The appeal was received on September 27, 1993. Therefore, the appeal was untimely filed, and must be rejected.

It is noted that the Director, Southern Service Center, indicated in a letter to the applicant dated December 9, 1993 that the case was being reopened. The applicant was later interviewed at the office of the District Director, St. Paul, Minnesota. Pursuant to 8 C.F.R. § 245a.2(q), when an appeal to the Administrative Appeals Office has been filed, the service center director may issue a new decision that will *grant* the benefit. **There is no provision in that regulation allowing the director to take another action.** The directors' actions taken subsequent to the filing of the appeal are therefore withdrawn.

ORDER: The appeal is rejected.