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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: [REDACTED]
XEM 88 146 07356

Office: CALIFORNIA SERVICE CENTER

Date: **NOV 05 2007**

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:

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. If your appeal was sustained, or if the matter 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 temporary resident status by the Director, California Service Center, is before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

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 alien may appeal a decision to terminate his temporary resident status to the AAO. Any appeal with the required fee shall be filed with the service center within thirty (30) days after service of the notice of termination. 8 C.F.R. § 245a.2(u)(2)(i). An appeal received after the thirty-day period has tolled will not be accepted. 8 C.F.R. § 103.3(a)(3)(iv)(C). 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).

A review of the record shows the Notice of Termination was issued on February 28, 1996, and mailed to the applicant, via certified mail, return receipt requested, at his address of record. The record reflects that the U. S. Postal Service returned the notice, indicating that the applicant had moved and left no address.

The regulation at 8 C.F.R. § 103.5a(c) provides:

In any proceeding which is initiated by the Service, with proposed adverse effect, service of the initiating notice and of notice of any decision by a Service officer shall be accomplished by personal service.

Pursuant to 8 C.F.R. § 103.5a(a)(2), personal service may be effected by any of the following:

- (i) Delivery of a copy personally;
- (ii) Delivery of a copy at a person's dwelling house or usual place of abode by leaving it with some person of suitable age and discretion;
- (iii) Delivery of a copy at the office of an attorney or other person including a corporation, by leaving it with a person in charge;
- (iv) Mailing a copy by certified or registered mail, return receipt requested, addressed to a person at his last known address.

Therefore, the record reflects that the applicant was properly served with notice of the director's intent to terminate the applicant's temporary resident status. The appeal was received on May 6, 1996, 67 days after the director issued his decision. Therefore, the appeal was untimely filed, and must be rejected.

ORDER: The appeal is rejected as untimely filed.