

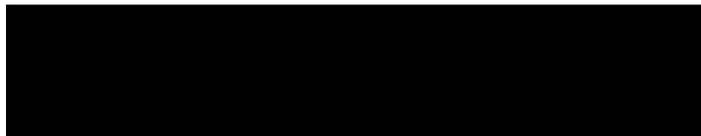
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
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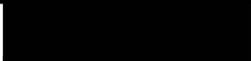
U.S. Citizenship
and Immigration
Services

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FILE:



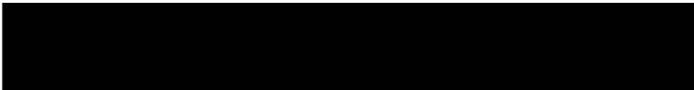
Office: LOS ANGELES

DATE:

JUL 22 2008

IN RE:

Applicant:



APPLICATION:

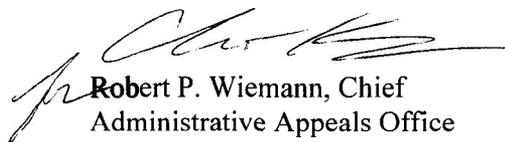
Application for Temporary Resident Status under Section 245A of the
Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office on your appeal. You no longer have a case pending before this office. If your appeal was sustained or the matter was remanded for further action, your file has been returned to the office that originally decided your case, and you will be contacted. If your appeal was dismissed or rejected, your file has been sent to the National Benefits Center. You are not entitled to file a motion to reopen or reconsider your case.


Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Western Service Center, denied the application for temporary resident status, which was then remanded by the Legalization Appeals Unit (LAU), and denied again by the District Director, Los Angeles. That decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed and the matter will be returned to the director for further action.

The director denied the application because the applicant failed to establish that she had resided unlawfully in the United States for the requisite period.

An adverse decision on an application for temporary resident status may be appealed to the AAO; the appeal with the required fee must be filed within 30 days after service of the notice of denial. 8 C.F.R. § 245a.2(p). If the decision, or notice of denial, was mailed, the applicant is afforded an additional three days, and the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b). The date of filing is not the date of mailing, but the date of actual receipt. *See* 8 C.F.R. § 103.2(a)(7)(i). An appeal that is not timely filed will not be accepted. 8 C.F.R. § 245a.2(p).

In this case, the director issued the notice of denial on January 30, 2008 and mailed it to the applicant's address of record. The appeal was received on March 26, 2008, 58 days later. Therefore, the appeal was untimely filed and must be rejected.

The LAU decision dated February 3, 2000 (which remanded the case to the director) specifically stated: "In the event the director denies the application, the applicant will be permitted to file an appeal . . . *without a fee* [emphasis added]." In his January 30, 2008 decision, the director nonetheless erroneously informed the applicant that she would have to pay a \$545 filing fee for her appeal. On March 26, 2008, the Los Angeles Field Office received the \$545 fee from the applicant. The fee must be returned to the applicant as it was collected in error.

ORDER: The appeal is rejected. The matter is returned to the director for reimbursement of the applicant's \$545 filing fee.