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U.S. Citizenship
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FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: SEP 08 2005

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Status as a Permanent 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 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, Director
Administrative Appeals Office

DISCUSSION: The application for adjustment from temporary resident status to permanent resident status was denied by the District Director, Miami, 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 pass the required English language and civics test.

An adverse decision on an application for adjustment to permanent resident status may be appealed to the Administrative Appeals Office. Any appeal shall be submitted to the service center with the required fee 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. The thirty-day period for submitting an appeal begins three days after the notice of denial is mailed. 8 C.F.R. § 245a.3(j).

The director issued the notice of denial on April 23, 1996 and mailed it to the applicant's address of record. It is noted that the director erred in titling his decision Notice of Intent to Deny. The text of the notice explained that it was an actual denial, and it advised the applicant of her appellate rights. The director erred again in referring to both a 30-day period and a 90-day period for the appeal. As stated above, the 30-day period is correct. Regardless, the appeal was received on April 8, 1997, more than 10 months after the 30-day appeal period expired. Therefore, the appeal was untimely filed, and must be rejected.

It is further noted that the Vermont Service Center sent a notice to the applicant dated April 18, 1997 stating there were no provisions for the filing of an appeal to a denied application for adjustment to permanent residence. That is true only if the reason for denial is that the application was filed untimely. Nevertheless, this amounts to harmless error.

The applicant filed another application for adjustment to permanent residence with her appeal on April 8, 1997. The Director, Texas Service Center denied that application because the applicant had not filed it within 43 months of obtaining temporary resident status on August 21, 1989. That director correctly advised the applicant that there is no appeal for a denial of a late-filed adjustment application. Pursuant to section 245A(f) of the Immigration and Nationality Act, as amended, 8 U.S.C. 1255a(f), no denial of adjustment of status under this section based on a late filing of an application for such adjustment may be reviewed by a court of the United States or of any State or reviewed in any administrative proceeding of the United States Government. Therefore, no appellate review will be undertaken by this office. It is noted that the first adjustment application filed by the applicant was also outside the 43-month period, and it should have been denied as untimely, which means it would not have been subject to appeal.

In spite of these errors, the applicant's rights were not abridged, as she simply did not file an adjustment application within the 43-month period.

ORDER: The appeal is rejected.