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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: JUL 19 2005

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. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: This matter is an application for temporary resident status terminated by the Director, Texas Service Center which 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 required 43-month application period.

In order to properly file an appeal, the regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that the affected party must file the complete appeal within 30 days after service of the unfavorable decision. If the decision was mailed, the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b).

The regulation at 8 C.F.R. § 103.2(a)(1) provides, in part, that "[e]very application, petition, appeal, motion, request ... shall be executed and filed in accordance with the instructions on the form, such instructions ... being hereby incorporated into the particular section of the regulations in this chapter requiring its submission." The instructions at item six on the appeal Form I-290B specifically require a signature on this form when the decision is appealed. It is noted that the applicant's initial attempt to file an appeal was defective in that it failed to contain a signature.

The record indicates that the director issued the decision on May 20, 1998. It is noted that the director properly gave notice to the applicant that she had 33 days to file the appeal. The applicant dated the appeal July 14, 1998, and the signed appeal was received by the Texas Service Center on July 20, 1998, or 61 days after the decision was issued. Accordingly, the appeal was untimely filed.

The regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(2) states that, if an untimely appeal meets the requirements of a motion to reopen or a motion to reconsider, the appeal must be treated as a motion, and a decision must be made on the merits of the case. The official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this case the director. *See* 8 C.F.R. § 103.5(a)(1)(ii). The director declined to treat the late appeal as a motion and forwarded the matter to the AAO.

As the appeal was untimely filed, the appeal must be rejected.

ORDER: The appeal is rejected.