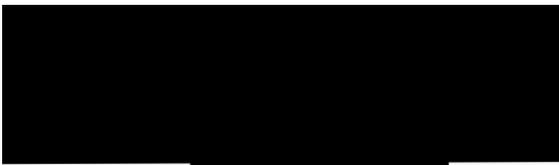


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prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



LI.

FILE:



Office: Miami

Date:

FEB 13 2009

XPS-94-002-00006

IN RE:

Applicant:



APPLICATION: Application for Adjustment from Temporary to Permanent 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 in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained, or if your case was remanded for further action, you will be contacted.

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The Director, Miami, denied the application for adjustment to permanent resident status in the legalization program because it was untimely filed. The matter is now before the Administrative Appeals Office (AAO). The appeal will be rejected.

The application for temporary residence was approved on April 4, 1988. On October 30, 1997 the director issued a denial of the Application to Adjust from Temporary to Permanent Resident (Form I-698) on the basis that the Form I-698 was not filed within the time period proscribed by the regulation.¹

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.

The AAO is without authority to review the denial of the application. The appeal must be rejected, in spite of the fact that the director stated an appeal could be filed. However, the director is not constrained from reopening the matter *sua sponte* to pursue termination of the applicant's temporary residence under the regulation at 8 C.F.R. § 245a.2(u)(1)(iv). The director is reminded that any notice of termination of temporary residence must be preceded by a notice of intent to terminate temporary residence under the procedures outlined in 8 C.F.R. § 245a.2(u)(2)(i).

ORDER: The appeal is rejected.

¹ The decision is erroneously dated October 30, 1998 and is erroneously captioned "Notice of Intent to Deny." The record establishes that the director issued the notice of decision on October 30, 1997 denying the applicant's Form I-698. The applicant filed a timely appeal on December 2, 1997, which is currently before the AAO.