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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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JUL 02 2009

FILE:



Office: CALIFORNIA SERVICE CENTER

Date:

XAH 88 049 7150

IN RE:

Applicant:



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. 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 remanded for further action, you will be contacted.

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The Application for Temporary Residence pursuant to Section 245A of the Immigration and Nationality Act was terminated by the Director, California Service Center. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The applicant submitted a Form I-698, Application to Adjust Status from for Temporary to Permanent Resident under Section 245A of the Immigration and Nationality Act (Act). The director denied the application, finding that the applicant had not filed an application to adjust from temporary to permanent resident with the statutory 43-month¹ filing period.

The director noted in his decision that the applicant was granted temporary resident status on June 28, 1988. The applicant was required to file an application for permanent resident status no later than January 28 1992. The applicant did not file the application within the statutory filing period, and therefore, the director denied the application. 8 C.F.R. § 245a.4(a)(20)(i)(D).

Following the denial of the Form I-698, the director terminated the temporary residence of the applicant. The appeal of the termination is before the AAO on appeal. Any appeal with the required fee shall be filed with the Service Center or district office issuing such decision within thirty (30) days after service of the notice of decision in accordance with the procedures of 8 C.F.R. § 103.3(a). An appeal received after the 30-day period has tolled will not be accepted. *See* 8 C.F.R. § 245a.2(p). Whenever a person has the right or is required to do some act within a prescribed period after the service of 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). 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).

The district director issued the notice of termination on January 12, 2007, and mailed a copy of the notice to the applicant at her address of record. The Form I-694, Notice of Appeal, was filed on June 22, 2007, 161 days after the notice of decision had been issued. Any appeal which is filed solely on the basis of a denial for failure to file the application for adjustment of status under section 245A in a timely manner, will be summarily dismissed. 8 C.F.R. § 103.3(a)(3)(iv). Thus, even if the appeal had been timely filed, it would be dismissed.

ORDER: The appeal is rejected.

¹ Sec. 703(a)(2), Immigration Act of 1990, Act of Nov. 29, 1990, Pub. L. No. 101-649, 104 Stat. 4978, substituted "43rd month" for "31st month".