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U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED]  
XSF-88-529-4008

Office: CALIFORNIA SERVICE CENTER

Date: OCT 11 2006

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:



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.

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

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application for temporary resident status was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be rejected.

The director denied the application because the applicant had failed to reside continuously in the United States due to a deportation.

An adverse decision on an application for temporary resident status may be appealed to the Administrative Appeals Office. Any appeal with the required fee shall be filed with the Service Center 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. *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 director issued the notice of denial on January 12, 1999, and mailed it to the applicant's address of record. In the notice, the director stated: "You may appeal this decision to the Legalization Appeals Unit by completing the enclosed Form I-694, NOTICE OF APPEAL, and filing it, in triplicate, with this office together with a \$50.00 fee in the form of a money order, cashier's check, or bank draft." Furthermore, the instructions to the Form I-694 stated: "A separate cashier's check or money order must be submitted for each application. All fees must be submitted in the exact amount. The fee must be in the form of a cashier's check or money order. No cash or personal checks will be accepted."

Every application, petition, appeal, motion, request, or other document submitted on the form prescribed by this chapter shall be executed and filed in accordance with the instructions on the form, such instructions (including where an application or petition should be filed) being hereby incorporated into the particular section of the regulations in this chapter requiring its submission. 8 C.F.R. § 103.2(a)(1). Thus, the applicant was required by regulation to file a timely appeal with the correct form of payment if he wanted his appeal to be considered. Although the appeal was received on February 8, 1999, it was not accompanied by the required \$50.00 fee in the form of a money order, cashier's check or bank draft, but rather by a check drawn on prior counsel's account. Therefore the appeal cannot be considered to have been properly filed at that point. On March 2, 1999 the appeal was mailed back to prior counsel with a notice advising him that the appeal could not be accepted at that point. The appeal was next received from prior counsel on March 11, 1999, 58 days after the notice of decision was issued. Therefore, the appeal was untimely filed, and must be rejected.

**ORDER:** The appeal is rejected.