

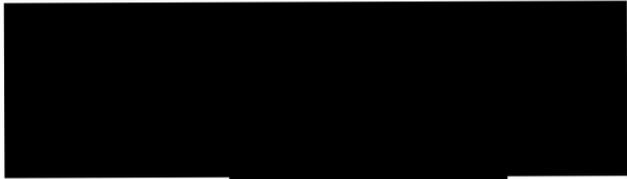
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FILE:

XPN 92 222 0010

Office: NEBRASKA SERVICE CENTER

Date FEB 28 2008

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. 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, Chief
Administrative Appeals Office

DISCUSSION: The application for adjustment from temporary to permanent resident status was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected and the matter returned to the director for further consideration.

The AAO notes that on the first page of the denial, dated October 1, 1992, the director informed the applicant of his right to appeal the adverse decision. However, 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 does not have the discretionary authority to review the appeal in the present matter despite the director's improper instructions. Therefore, this appeal must be rejected. However, the director is not constrained from reopening the matter *sua sponte*.

The record shows that the applicant filed Form I-90 within the required 43-month time period. In a letter dated September 10, 1992, the applicant was informed that he attempted to file for permanent resident status using the wrong form and that the Form I-698 should have been used. It is noted that the applicant's time period to adjust to permanent resident status had expired on September 6, 1992, or four days prior to the issuance of the letter informing the applicant of his error. The applicant cured the filing deficiency shortly after having been informed of the problem. Thus, under the circumstances, the director would be justified in deeming the applicant's Form I-698 as timely filed. Notwithstanding the AAO's recommendation, this appeal must nevertheless be rejected as expressly mandated by section 245A(f) of the Act.

ORDER: The appeal is rejected.