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**U.S. Citizenship
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Services**

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FILE:



Office: HOUSTON

Date:

MAR 27 2008

SRC 96-021-51690

IN RE:

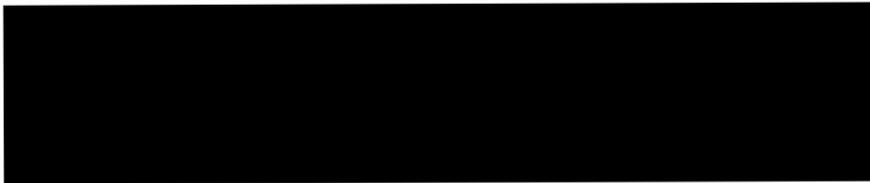
Applicant:



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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office on your appeal. You no longer have a case pending before this office. If your appeal was sustained or the matter was remanded for further action, your file has been returned to the office that originally decided your case, and you will be contacted. If your appeal was dismissed or rejected, your file has been sent to the National Benefits Center. You are not entitled to file a motion to reopen or reconsider your case.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The District Director, Houston, denied the application for adjustment of status from temporary to permanent resident. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

Applicants for adjustment to permanent resident status under section 245A of the Immigration and Nationality Act (Act), 8 U.S.C. § 1255a, must demonstrate that they meet the requirements of section 312(a) of the Act, 8 U.S.C. § 1423, regarding a minimal understanding of ordinary English and a knowledge and understanding of the history and government of the United States; or that they are satisfactorily pursuing a recognized course of study. Section 245A(b)(1)(D)(i) of the Act, 8 U.S.C. § 1255a(b)(1)(D)(i); 8 C.F.R. § 245a.3(b)(4)(i). The applicant appeared for two interviews and was provided two opportunities to pass the relevant exam, on February 24, 1997 and on December 6, 2006. The director denied the application as the applicant failed to pass the exam or submit relevant evidence that he was pursuing a recognized course of study.

On appeal, the applicant, through counsel, asserts that the applicant is exempt from the requirements of section 312(a) of the Act. He cites to section 245A(b)(1)(D)(ii) of the Act, 8 U.S.C. § 1255a(b)(1)(D)(ii), which provides for a waiver of the “Basic Citizenship Skills” requirements for an applicant who is 65 or older or who is developmentally disabled.¹ The record shows that the applicant was born on May 8, 1936 and was 70 years old at the date of his second interview.

Regardless of the equities and particular circumstances of the applicant, the AAO does not have jurisdiction to reach a decision on appeal based on an evaluation of the evidence in this case. The appeal of the director’s decision to deny was untimely filed and must be rejected.

An adverse decision on an application for temporary resident status may be appealed to the AAO; the appeal with the required fee must be filed within 30 days after service of the notice of denial. 8 C.F.R. § 245a.2(p). If the decision, or notice of denial, was mailed, the applicant is afforded an additional three days, and the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b). The date of filing is not the date of mailing, but the date of actual receipt. 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 director issued the Notice of Denial on July 19, 2007 and mailed it to the applicant's and counsel’s addresses of record. The appeal was filed on August 24, 2007, 36 days later. Therefore, the appeal was untimely filed and must be rejected.

The AAO notes that the director may *sua sponte* reopen any proceeding under his jurisdiction opened under 8 C.F.R. § 245a and reconsider any decision rendered in such proceeding. 8 C.F.R. § 103.5(b); 8 C.F.R. § 245a.2(q). Additionally, the director may certify any such decision to the AAO. 8 C.F.R. § 103.4(b); 8 C.F.R. § 245a.2(r).

ORDER: The appeal is rejected.

¹ The regulations clarify that these requirements shall be waived for applicants who “as of the date of application or the date of eligibility for permanent residence . . . , whichever date is later, are: (A) Under 16 years of age; or (B) 65 years of age or older; or (C) Over 50 years of age who have resided in the United States for at least 20 years” 8 C.F.R. § 245a.3(b)(4)(ii). The applicant in this case would have remained eligible to adjust to permanent resident status at his second interview in 2006.