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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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[REDACTED]

FILE: [REDACTED]
MSC-06-291-11052

Office: EL PASO

Date: OCT 14 2008

IN RE: Applicant:

[REDACTED]

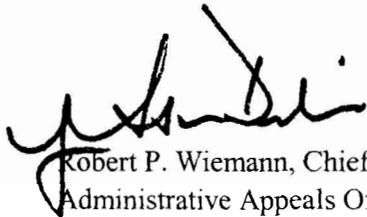
APPLICATION: Application to Adjust Status from Temporary to Permanent Resident under Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:

[REDACTED]

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 to adjust from temporary to permanent resident status (Form I-698) was denied by the director of the El Paso Office. The decision is now before the Administrative Appeals Office on appeal. The appeal will be rejected.

In a Notice of Decision dated January 28, 2008 the director denied the application because the applicant had not timely filed it within the 43-month filing period.¹ On appeal, a Notice of Appeal, Form I-694, was timely submitted on February 26, 2008; however, it was not accompanied by the correct filing fee. The applicant filed the same Form I-694 again on March 25, 2008 with the required fee.

An applicant for adjustment from temporary to permanent resident status may appeal an adverse decision to the AAO. 8 C.F.R. § 245a.3(j). The regulations further provide that appeals shall be submitted to the *Regional Processing Facility with the required fee within 30 days after service of the Notice of Denial*; that an appeal received after the 30-day period has tolled will not be accepted; and that the 30-day period for submitting an appeal begins three days after the notice of denial is mailed. *Id.*

Every application, petition, appeal, motion, request, or other document submitted on the form prescribed by the Department of Homeland Security regulations shall be executed and filed in accordance with the instructions on the form; and the instructions are incorporated into the particular section of the regulations requiring its submission. 8 C.F.R. § 103.2(a)(1). Form I-694, the Notice of Appeal form relevant to this proceeding includes the following instruction:

Any Form I-694 that is not signed or accompanied by the correct fee will be rejected with a notice that the Form I-694 is deficient. [An applicant] may correct the deficiency and resubmit the Form I-694.²

In this case, as the Form I-694 that was timely submitted was not accompanied by the correct fee, it was not properly filed and was rejected as deficient. As noted above, the applicant also submitted the same Form I-694, but with the correct fee, on March 25, 2008, after she was notified that the fee was incorrect. An appeal that is not timely filed will not be accepted. 8 C.F.R. § 245a.3(j).

The director issued the notice of denial on January 28, 2008 and mailed it to the applicant's address of record. The appeal that was properly filed with the correct fee was received on March 25, 2008, 57 days later. Therefore, the appeal was untimely filed and must be rejected on this basis.

ORDER: The appeal is rejected.

¹ The AAO notes that the Notice of Decision also indicated that the applicant had failed to meet her burden of proving that she was eligible for temporary residence under 8 C.F.R. § 245a.2(d)(5). This appears to have been an error, as both a Notice of Intent to Deny and the Notice of Decision issued in this case clarified that it was the failure to timely file for adjustment from temporary to permanent resident status that was the basis for the denial.

Note, however, that a rejected application or petition will not retain a filing date. 8 C.F.R. § 103.2(a)(7). The resubmitted Form I-694 must therefore also be filed within the 30-day filing period to be considered timely.