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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529 - 2090



U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: MAR 05 2009
XPO-88-159-2009

IN RE: Applicant: [Redacted]

APPLICATION: Application for Temporary Resident Status 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 on your appeal. If your appeal was dismissed or rejected, your file has been sent to the National Benefits Center. 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. You are not entitled to file a motion to reopen or reconsider your case.

A handwritten signature in dark ink, appearing to read "John F. Grissom".

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The Director, Western Service Center, denied the application for temporary resident status. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed.

The director denied the application because the applicant failed to provide evidence establishing his admissibility to the United States. Specifically, in the Notice of Intent to Deny, the director requested the court disposition for criminal charges on the applicant's record, including possession of a controlled substance and use/under the influence of a controlled substance. The director noted in the decision that the applicant failed to submit the evidence requested.

The applicant filed a request for information under the Freedom of Information Act (FOIA), and stated that he would file a brief in support of the appeal within 30 days of receipt of the information. The FOIA request was fulfilled on June 3, 2008. To date, no further submission has been received into the record.

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). 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).

On appeal, the applicant indicates that he did not receive the notice of decision. In this case, the director issued the notice of denial on May 17, 1996 and mailed it to the applicant's address of record. The appeal was received on March 10, 2005, almost nine years later. Therefore, the appeal was untimely filed and must be rejected.

ORDER: The appeal is rejected.