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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

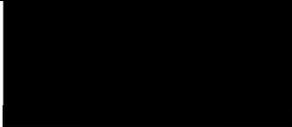


**U.S. Citizenship
and Immigration
Services**

41



FILE:



Office: CHICAGO

Date: **APR 12 2010**

MSC-05-195-17813

IN RE:

Applicant:



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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Chicago, denied the application for temporary resident status. The applicant subsequently appealed the director's decision to the Administrative Appeals Office (AAO). The AAO rejected the appeal as untimely filed. The applicant requested that the AAO reopen and reconsider its previous decision. The AAO will *sua sponte* reopen and reconsider the appeal. The appeal will again be rejected.

Pursuant to the regulation at 8 C.F.R. § 103.5(b), the AAO may *sua sponte* reopen or reconsider any proceeding within its jurisdiction. Upon review, in its previous decision, the AAO rejected the appeal as untimely filed based on erroneous dates. The AAO will reopen its previous decision and correct the dates upon which the previous decision was based. The appeal must again be rejected as untimely filed.

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). An appeal that is not timely filed will not be accepted. 8 C.F.R. § 245a.2(p).

In this case, the director issued the notice of denial on August 18, 2005. On motion, the applicant submitted proof that the director mailed the decision on August 23, 2005 to the applicant's address of record. On motion, the applicant states that he timely filed the appeal by mailing it to United States Citizenship and Immigration Services (USCIS) on September 24, 2005. The date of filing is not the date of mailing, but the date of actual receipt at USCIS. *See* 8 C.F.R. § 103.2(a)(7)(i). The appeal was received on September 27, 2005, 35 days later.¹ Therefore, the appeal was untimely filed and must be rejected. 8 C.F.R. § 245a.2(p).

ORDER: The appeal is rejected.

¹ In its previous decision the AAO stated that the appeal was received on September 29, 2005. The AAO withdraws its previous finding. The evidence of record establishes that the appeal was received at USCIS on September 27, 2005.