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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
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FILE:

MSC 07 073 11377
[MSC 08 339 11058 – Appeal]

Office: EAST LOS ANGELES

Date:

JAN 26 2010

IN RE: Applicant:



APPLICATION: Application to Adjust Status From Temporary to Permanent Resident pursuant to 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. The file has been returned to the National Benefits Center. If your appeal was sustained, or if the matter 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.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application to adjust status from temporary to permanent resident was rejected by the Director, Lee's Summit, Missouri. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The director rejected the application on July 28, 2008, because the applicant's status as a temporary resident had been terminated on June 17, 2008, and he was, therefore, no longer eligible to adjust his status to that of a permanent resident.¹ The applicant filed the current appeal from that decision on September 2, 2008.

An adverse decision on an application may be appealed to the AAO; however, 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 thirty-three 33 days. 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).

In this case, the director issued the notice of rejection on July 28, 2008 and mailed it to the applicant's address of record. The appeal was received 36 days later on September 2, 2008. Therefore, the appeal was untimely filed and must be rejected.

It is noted that the record indicates that an Immigration Judge (IJ) ordered that the applicant be deported to Guatemala on March 19, 1996. That order remains outstanding.

ORDER: The appeal is rejected.

¹ The applicant filed an appeal from the decision to terminate his temporary resident status on July 10, 2008. A decision on that appeal will be provided under separate cover.