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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**

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[Redacted]

FILE: [Redacted]  
XSF-88-511-5012

Office: CALIFORNIA SERVICE CENTER

Date: **JAN 27 2010**

IN RE: Applicant:

[Redacted]

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:

[Redacted]

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

The director denied the application because the record of proceeding contains evidence that the applicant was convicted of two felonies and two misdemeanors. The director stated that the applicant did not provide sufficient evidence to meet his burden of proof to establish his eligibility for the benefit sought.

On appeal, counsel argues that the appeal is timely because the Form I-694 was filed within 30 days of receipt of the applicant's Freedom of Information Act (FOIA) request. Counsel states that the director's decision was mailed to prior counsel and the applicant was not aware of the decision until counsel received the FOIA request. The AAO notes that the director's decision was mailed to the applicant's address of 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 thirty (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. 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 denial on December 27, 1993 and mailed it to the applicant's address of record. The appeal was received on May 9, 1994, 133 days later. Therefore, the appeal was untimely filed and must be rejected.

**ORDER:** The appeal is rejected.