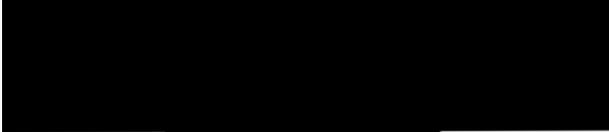




U.S. Citizenship
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FILE: [REDACTED]
XEM-88-007-07030

Office: CALIFORNIA SERVICE CENTER

Date: **JAN 27 2010**

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:

SELF-REPRESENTED

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.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The termination of the applicant's temporary resident status by the Director, California Service Center, is before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant was granted temporary resident status under section 245A of the Immigration and Nationality Act (Act), as amended, 8 U.S.C. § 1255a. However, the applicant failed to appear on at least two occasions for scheduled interviews with United States Citizenship and Immigration Services (USCIS) and therefore, his application to adjust from temporary to permanent resident status was denied on January 9, 2003. Accordingly, on August 21, 2003, USCIS sent the applicant a Notice of Intent to Terminate (NOIT) his temporary resident status because his application to adjust to permanent resident status had been denied. No response to the NOIT was received and the applicant's temporary resident status was terminated on November 13, 2003. On April 27, 2005 the applicant filed an appeal of the termination and requested a copy of the record of proceedings under Freedom of Information Act (FOIA). This request was processed on February 20, 2007 (NRC2006063543). The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will 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 thirty (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 (3) 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 termination on November 13, 2003 and mailed it to the applicant's address of record. A copy of the record was sent to counsel of record.¹ The appeal was received on April 27, 2005, 17 months later. Therefore, the appeal was untimely filed and must be rejected.

ORDER: The appeal is rejected.

¹ The applicant did not submit a Form G-28, notice of entry of appearance, so he will be treated as self-represented.