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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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MAY 06 2010

FILE: [Redacted]
XTO-88-500-3047

Office: CALIFORNIA SERVICE CENTER Date:

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:



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 termination of the applicant's temporary resident status by the Director, California Service Center is before the Administrative Appeals Office on appeal. This matter will be rejected as untimely filed.

The applicant submitted a Form I-687, Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (Act) on April 22, 1988. The director approved the application; however, on June 18, 1991, the director issued a Notice of Intent to Terminate (NOIT), noting that the applicant had been convicted of at least two crimes for which the final court dispositions had not been submitted.¹ The NOIT was sent to the applicant's address of record. On August 24, 1991, the applicant submitted a letter indicating that he had received the NOIT along with a statement from the San Pedro County Clerk indicating that no court records were found for his two arrests. On September 2, 1991, the director sent the applicant a Notice of Termination (NOT) to the applicant at his address of record. The AAO will uphold the director's decision. The director indicated that United States Citizenship and Immigration Services (USCIS) had not received a response to the NOIT. This portion of the director's decision shall be withdrawn.

USCIS records indicate that the applicant entered the United States on July 21, 1992 and was entered into exclusion proceedings because his temporary resident status had been terminated and no appeal had been filed. The applicant indicated that he did not receive the NOT and was not aware of the termination of his status. Records indicate that the applicant then filed a Form I-694 appeal of the termination of his temporary resident status on July 19, 1993, nearly two years after the termination of his status. The applicant's request for a copy of the record of proceedings was processed on September 17, 2009.²

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 denial on September 2, 1991. On July 21, 1992, the applicant was again informed that his status was terminated when he attempted to gain entry to the United States. Records indicate that the applicant then filed a Form I-694 appeal of the termination of his temporary resident status on July 19, 1993, nearly two years after the termination of his status. On July 18, 2007 the director contacted the applicant to obtain a copy of the Form I-694 and to issue another Form I-72 Request for Evidence along with any supporting

¹ According to an FBI report based on the applicant's fingerprints, he was arrested on February 19, 1976 and charged with driving under the influence and on February 8, 1988 for possessing/manufacturing/selling dangerous weapon. The record further indicates that the applicant was convicted on May 16, 1988 on the latter charge.

² NRC2009011269.

documents. The applicant failed to respond to the director's request or resubmit the appeal until nine months later, May 19, 2008.

The appeal was untimely filed and must be rejected.

ORDER: The appeal is rejected.