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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W. MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

L1

[REDACTED]

Date: **JUL 06 2012** Office: TEXAS SERVICE CENTER FILE: [REDACTED]

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application for temporary resident status under section 245A of the Immigration and Nationality Act (Act) was denied by the director, Texas Service Center. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

In order to properly file an appeal, the regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that an affected party or the attorney or representative of the record must file a complete appeal within 30 days after service of an unfavorable decision. If the decision is mailed, the 30-day period for submitting an appeal begins 3 days after it is mailed. 8 C.F.R. § 103.5a(b). The date of filing is the date of actual receipt of the appeal, not the date of mailing. *See* 8 C.F.R. § 103.2(a)(7)(i).

The record reflects that the director issued the decision on December 6, 2011 and mailed it to the applicant and applicant's counsel of record at their address of record. It is noted that the director notified the applicant that he had 30 days to file an appeal, but as the decision was mailed to the applicant and his counsel, the applicant was notified that he had 33 days to file an appeal. Although the applicant's current attorney dated the appeal on February 13, 2012, the appeal was not received until February 24, 2012, seventy-Eight (78) days after the decision was issued. Therefore, the appeal was untimely filed and must be rejected.

On appeal, counsel admits that the appeal was being submitted more than 30 days after the decision, but asserts that the decision, which was mailed to the applicant's prior attorney was returned and that the director resent the decision to the prior attorney on February 6, 2012. Counsel then contends that the February 24, 2012 appeal date is timely.¹ There is no evidence in the record to support counsel's assertion. Neither the Act nor the pertinent regulations grant the AAO authority to extend the time limit for filing an appeal.

As the appeal was untimely filed, the appeal must be rejected.

ORDER: The appeal is rejected.

¹ The AAO notes that the decision, dated December 6, 2011, was mailed to the applicant via certified mail return receipt requested, to the applicant at [REDACTED] which is the same address as the applicant's current on appeal. It is also noted that the decision was not returned as undeliverable. The record also reflects that a copy of the decision was mailed to the applicant's prior attorney at his last known address of record. There is also no evidence in the record that the decision was returned undeliverable. The AAO finds the current attorney's claim that the applicant did not receive the decision until sometime in February 2012, is without merit.