

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**

[REDACTED]

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Date: **NOV 20 2012**

Office: LOS ANGELES

[REDACTED]

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Adjustment from Temporary to Permanent 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 National Benefits Center. 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.

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The application for adjustment from temporary to permanent resident status was denied by the director of the Los Angeles office. The matter is now before the AAO on appeal. The AAO will reject the appeal as untimely filed.

The director denied the Form I-698, application to adjust status from temporary to permanent resident, based upon the fact that the applicant has three or more criminal convictions, rendering him *statutorily ineligible for adjustment to permanent resident status*.¹ On July 28, 2008, the applicant filed the instant appeal.²

In order to properly file an appeal, the regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that the affected party must file the complete appeal within 30 days of service of the unfavorable decision. If the decision was mailed, the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.8(b). In accordance with 8 C.F.R. § 103.2(a)(7)(i), an application received in an office of the United States Citizenship and Immigration Services (USCIS) shall be stamped to show the time and date of actual receipt, if it is properly signed, executed, and accompanied by the correct fee. For calculating the date of filing, the appeal shall be regarded as properly filed on the date that it is so stamped by the service center or district office.

The record indicates that the director issued the decision on May 15, 2008, and mailed it to the applicant's address of record. According to the date stamp on the Form I-694, Notice of Appeal, it was received by USCIS on July 28, 2008, or 74 days after the decision was issued. Accordingly, the appeal was untimely filed. Neither the Act nor the pertinent regulations grant the AAO the authority to extend the 33-day time limit for filing an appeal.³

In addition, while the AAO may *sua sponte* reopen, on its own motion, a matter previously adjudicated, the record reveals no error in the adjudication of the application for adjustment from temporary to permanent resident status that would warrant reopening. In addition, the applicant has not submitted any additional evidence with his appeal that would warrant reopening the matter *sua sponte*.

The appeal was untimely filed and must be rejected.

ORDER: The appeal is rejected.

¹An alien who has been convicted of a felony or three or more misdemeanors in the United States is ineligible for adjustment to permanent resident status. 8 C.F.R. § 245a.3(c)(1). There is no waiver available to an alien convicted of a felony or three or more misdemeanors committed in the United States.

²The applicant requests 90 days after the processing of the applicant's FOIA request within which to submit a brief and additional evidence. The AAO notes that the applicant's FOIA request, number [REDACTED] was processed on August 19, 2012. The applicant has not submitted a brief or any further evidence on appeal.

³The AAO notes that the applicant has filed one appeal for two applications, the I-698 application and the I-687 application. Since each application or petition that is denied requires its own appeal with separate fees, the AAO will here adjudicate only the appeal of the denial of the I-698 application. However, even if the appeal of the terminated I-687 application were adjudicated, it would be rejected as untimely, since it was filed 39 days after the director's decision.