



U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED]  
MSC-05-059-10173

Office: NEWARK, NJ

Date: AUG 28 2007

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: SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has 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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application for temporary resident status was denied by the Director of the Newark District Office and is now before the Administrative Appeals Office on appeal. The appeal will be rejected.

The director denied the application because she determined that the applicant did not establish, by a preponderance of the evidence, that he maintained continuous residence in the United States from January 1, 1982 to a period of time between May 5, 1987 and May 4, 1988. Specifically, the director noted that the applicant had submitted only one piece of evidence in addition to his Form I-687, a photocopy of the applicant's B1/B2 Visa issued April 10, 2001, which is not relevant to the requisite period. At the time of the applicant's interview, he submitted an additional affidavit in support of his application. The director found that because the applicant did not submit proof of the affiant's United States Citizenship or Lawful Permanent Residence in the United States it was not acceptable evidence. The director also noted that the applicant did not submit evidence to establish that he left the United States between 1980 and 1990.

The director made the determination that the applicant did not meet his burden of establishing that he was "front-desked" or that he attempted to file for legalization during the period of initial filing period and was discouraged from doing so by either the INS or a QDE. The director further stated that the applicant both failed to prove that he was eligible to file an I-687 under the LULAC class settlement agreement and that he failed to establish that he maintained continuous residence in the United States during the requisite period. Therefore, the director denied the applicant's Application for Status as a Temporary Resident.

It is noted that according to the settlement agreements, the director shall issue a NOID before denying an application for class membership. Here, however, the director adjudicated the Form I-687 application on the merits. As a result, the director is found not to have denied the application for class membership. Therefore, the director was not required to issue a NOID prior to issuing the final decision in this case.

An adverse decision regarding temporary resident status may be appealed to the Administrative Appeals Office. Any appeal with the required fee shall be filed with the Service Center within thirty (30) days after service of the notice of denial. An appeal received after the thirty-day period has tolled will not be accepted. See 8 C.F.R. § 245a.2(p). Pursuant to 8 C.F.R. § 103.5a(b), whenever a person has the right or is required to do some act within a prescribed period after the service of notice upon him and the notice is served by mail, three days shall be added to the prescribed period. Service by mail is complete upon mailing. If the last day of the period so computed falls on a Saturday, Sunday or a legal holiday, the period shall run until the end of the next day which is not a Saturday, Sunday, nor a legal holiday. 8 C.F.R. § 1.1(h).

The director issued her decision on May 3, 2006, and mailed it to the applicant's address of record. The appeal was received on June 6, 2006, thirty-four (34) days after the notice of decision was issued. Therefore, the appeal was untimely filed, and must be rejected.

**ORDER:** The appeal is rejected.