

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY

L1



FILE: [REDACTED]  
MSC-05-211-10586

Office: NEW YORK

Date: DEC 06 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.

A handwritten signature in cursive script, appearing to read "Eric Haldan".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application for Temporary Resident Status pursuant to the terms of the settlement agreements reached in *Catholic Social Services, Inc., et al., v. Ridge, et al.*, CIV. NO. S-86-1343-LKK (E.D. Cal) January 23, 2004, and *Felicity Mary Newman, et al., v. United States Immigration and Citizenship Services, et al.*, CIV. NO. 87-4757-WDK (C.D. Cal) February 17, 2004 (CSS/Newman Settlement Agreements), was denied by the District Director, New York. The decision is now before the Administrative Appeals Office (AAO) 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 she 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 in her Notice of Intent to Deny (NOID) that the applicant indicated to the Service that she departed the United States in 1986 to attend school in the United Kingdom. It is noted here that applicants for adjustment of status to that of a Temporary Resident bear the burden of establishing that they resided continuously in the United States for the duration of the requisite period pursuant to the regulation at 8 C.F.R. 245a.2(d)(5). The director noted in her decision that in order for an applicant to have resided continuously no single absence during that period can have been more than forty-five (45) days pursuant to the regulation at 8 C.F.R. 245a.2(h)(1)(i). Because the director found and the record supports that here, the applicant was absent for more than forty-five (45) days during the requisite period, she found the applicant did not prove by a preponderance of the evidence that she maintained continuous residence in the United States. The director granted the applicant thirty (30) days within which to submit additional evidence in support of her application. It is noted that the director issued her NOID on June 2, 2006. The record shows that the applicant sent the Service a request for an extension of this time to respond to the director's NOID and a request for her record of proceedings on June 13, 2006. The record then shows that on June 21, 2006, eighteen (18) days after the director issued her NOID, she denied the application, noting that her office had received a response from the applicant regarding her NOID on June 20, 2006. It appears that the response that the director is referring to is the applicant's request for an extension and for a copy of her record of proceedings. The director noted that the applicant's request for an additional sixty (60) days to respond to the director's NOID would not be granted. The director further stated that decision to deny was not based on a lack of evidence, but rather on testimony and evidence provided by the applicant in which the applicant and affiants stated that the applicant had broken her continuous residence during the requisite period. Therefore, the director found she was ineligible to adjust status to that of a Temporary Resident and denied the application.

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 June 21, 2006, and mailed it to the applicant's address of record. The applicant's appeal was received on August 10, 2006, fifty (50) days after the notice of decision was issued. As the appeal was untimely filed, it must be rejected.

The record indicates the director sent her Notice of Intent to Deny (NOID) on June 2, 2006. In this letter, she indicates that she is granting the applicant thirty (30) days from the date of that NOID to submit additional evidence in support of her application. The record shows that the applicant timely submitted five (5) affidavits in response to that NOID. It is not clear whether the director considered these affidavits in her decision. However, it is clear that the director issued her Decision prior to the thirty (30) days within which she granted the applicant to submit additional evidence had lapsed. It is noted that, pursuant to 8 C.F.R. § 210.2(g), the director may *sua sponte* reopen any adverse decision. Additionally, the director may certify any such decision to the AAO. *See* 8 C.F.R. § 210.2(h).

**ORDER:** The appeal is rejected.