



U.S. Citizenship  
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Services

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FILE: [REDACTED]  
MSC-05-223-10450

Office: NEW YORK

Date: **NOV 02 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:

[REDACTED]

**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 New York District Office and that decision 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 in her Notice of Intent to Deny (NOID) that, though the applicant submitted evidence in the form of affidavits in support of his application, she found this evidence lacking. She went on to say that the affidavits did not pertain to the duration of the requisite period and did not establish that the applicant entered the United States on a date before January 1, 1982. She also found that the affidavits submitted by the applicant were not credible. The director granted the applicant thirty (30) days within which to submit additional evidence in support of his application. As the applicant did not submit additional evidence in support of his application, he did not overcome the director's reasons for denial as stated in the NOID.

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 January 4, 2006 and sent it certified mail to the applicant at his address of record. The applicant's appeal was first received timely on Monday, February 6, 2006, thirty-three (33) days after the notice of decision was issued. The record shows that the applicant's I-694 Notice of Appeal of Decision was rejected by the Service at that time because the applicant failed to include the correct fee with his application. The instructions for filing the Form I-694 clearly indicate that any Form I-694 that is not signed or accompanied by the correct fee will be rejected with a notice that the Form I-694 is deficient. As the applicant submitted his Form I-694 without the correct fee, his first submission of this form was not properly filed. Therefore, the applicant's appeal was rejected for legitimate reasons. The applicant's properly filed I-694 was resubmitted and accepted by the Service on February 14, 2006, forty-one (41) days after the director issued her decision. As the appeal was untimely filed, it must be rejected.

**ORDER:** The appeal is rejected.