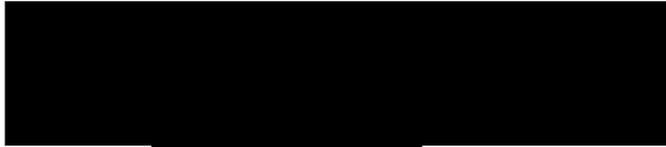


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Services

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FILE:

MSC 05 222 11591

Office: CHICAGO, IL

Date:

NOV 07 2007

IN RE:

Applicant:



APPLICATION:

Application for Temporary 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 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 pursuant to the terms of the settlement agreements reached in *Catholic Social Services, Inc., et al., v. Ridge, et al.*, CIV. NO. S- [REDACTED] LKK (E.D. Cal) January 23, 2004, and *Felicity Mary Newman, et al., v. United States Immigration and Citizenship Services, et al.*, CIV. NO. [REDACTED] February 17, 2004 (CSS/Newman Settlement Agreements), was denied by the Acting District Director, Chicago. The applicant filed an appeal, which the director of the National Benefits Center rejected. The matter is now before the Administrative Appeals Office (AAO) for review. The AAO hereby withdraws the decision of the director of the National Benefits Center to reject the applicant's appeal based on the director's lack of jurisdiction over the matter. See 8 C.F.R. § 103.3(a)(2)(iv). Upon review of the matter, the AAO enters its own decision rejecting the appeal.

The acting director denied the application because he found the evidence submitted with the application was insufficient to establish eligibility for Temporary Resident Status pursuant to the terms of the CSS/Newman Settlement Agreements. Specifically, he stated that the applicant failed to meet her burden of proof of establishing by a preponderance of the evidence that she maintained continuous residence for the duration of the requisite period pursuant to 8 C.F.R. § 245a.2(d)(5). The director noted that he made this finding because affidavits submitted by the applicant were not amenable to verification.

The director of the National Benefits Center subsequently rejected the appeal citing 8 C.F.R. § 245a.2(p), which states appeals of adverse decisions of applications to adjust to Temporary Resident Status are within the jurisdiction of the Administrative Appeals Office (AAO). This section goes on to say that any appeal received after the thirty (30) day period has tolled will not be accepted. However, the regulation at 8 C.F.R. § 103.3(a)(2)(iv) states the following:

If the reviewing official will not be taking favorable action or decides favorable action is not warranted, that official shall promptly forward the appeal and the related record of the proceeding to the AA[O] in Washington, D.C.

Therefore, the director's rejection of the appeal was invalid and must be withdrawn, as jurisdiction with regard to the appeal remains with the AAO, not with the director of the National Benefits Center.

Accordingly, the AAO hereby withdraws the director's decision and enters its own decision rejecting the applicant's appeal based on its untimely filing.

An adverse decision on an application for 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. 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 (3) days shall be added to the prescribed period. Service by mail is complete upon mailing. 8 C.F.R. § 103.5a(b). An appeal received after the thirty-day period has tolled will not be accepted. See 8 C.F.R. § 245a.2(p). 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 his decision on May 19, 2006 and mailed it to the applicant's address of record. The appeal was initially received on August 1, 2006, seventy-four (74) after the notice of denial was issued. The record shows that the appeal was rejected by the Service because the applicant failed to indicate the receipt number of the decision that she was appealing. It is noted here that applicant's are not required to show this receipt number. Therefore, the AAO finds that this rejection was in error. The applicant then resubmitted her Form I-694, which was received by the Service on September 6, 2006, one hundred ten (110) days after the decision was issued. However, the appeal, when initially filed, was untimely and must be rejected.

**ORDER:** The appeal is rejected.