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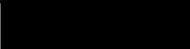


U.S. Citizenship  
and Immigration  
Services

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41

FILE:   
MSC-05-238-11419

Office: NEW YORK Date: **NOV 07 2007**

IN RE: Applicant: 

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 N. 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 of 4, 1988. Specifically, the director noted in her Notice of Intent to Deny (NOID) that at the time of his interview with a Citizenship and Immigration Services (CIS) officer, the applicant stated that he was absent from the United States from March 4, 1987 until May 1987. The director noted that this indicated the applicant had not maintained continuous residence for the duration of the requisite period, as this constituted an absence of forty-five (45) days or more. 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 for consideration, he did not overcome the director's reasons for denial as stated in her NOID and she 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 July 2, 2007, and mailed it to the applicant's address of record. The applicant's appeal was first received timely on July 31, 2007. However, the record shows that the applicant's I-694 Notice of Appeal of Decision was rejected after this first submission because he failed to provide the correct filing fee with his Form I-694. The applicant resubmitted his Form I-694 with the correct filing fee, which was sent with United States Tracking Number [REDACTED]. Postal Service records show that the applicant's Form I-694 with the correct filing fee was delivered on August 15, 2007, forty-three (43) days after the director issued her decision. Therefore, as the applicant has filed his Form I-694 untimely it must be rejected.

**ORDER:** The appeal is rejected.