

PUBLIC COPY

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

LI



FILE:

MSC-05-095-10210

Office: NEW YORK

Date: NOV 13 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] WDK (C.D. Cal) February 17, 2004 (CSS/Newman Settlement Agreements), was denied by the District Director, New York. That decision is now before the Administrative Appeals Office on appeal. The appeal will be rejected.

The director denied the application because she found the applicant did not provide sufficient evidence to prove by a preponderance of the evidence that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through the date that he attempted to file a Form I-687, Application for Status as a Temporary Resident, with the Immigration and Naturalization Service or the Service (now Citizenship and Immigration Services or CIS) in the original legalization application period of May 5, 1987 to May 4, 1988. It is noted here that applicants for adjustment of status to that of a Temporary Resident bear the burden of proving that they resided continuously in the United States for the duration of the requisite period pursuant to 8 C.F.R. § 245a.2(d)(5). Here, though the director noted that her office did receive evidence from the applicant, she did not find it was sufficient to meet this burden.

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).

It is noted here that an applicant for Temporary Resident Status may appeal an adverse decision on Form I-694 pursuant to 8 C.F.R. § 245a.2(o). The regulations further provide that every application, petition, appeal, motion, request, or other document submitted on the form prescribed by the Department of Homeland Security regulations shall be executed and filed in accordance with the instructions on the form; and the instructions are incorporated into the particular section of the regulations requiring its submission. 8 C.F.R. § 103.2(a)(1). Form I-694 includes the following instruction:

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. [An applicant] may correct the deficiency and resubmit the Form I-694.¹

¹ Note, however, that a rejected application or petition will not retain a filing date. 8 C.F.R. § 103.2(a)(7). As this Form I-694 was not properly filed within 30 days of the notice of decision, it was not timely resubmitted.

In this case, the director issued her decision on May 14, 2007, and mailed it to the applicant's address of record. The first rejection notice in the applicant's file indicates that the applicant's Form I-694 Notice of Appeal of Decision Under Section 210 or 245A of the INA was first received timely, on June 14, 2007. However, it was rejected at that time because it was not signed. The record contains a second rejection notice that indicates that the applicant's Form I-694 was received again on July 9, 2007, fifty-six (56) days after the director issued her decision. However, it was rejected a second time because it was still not signed. The record shows the applicant's properly filed, signed Form I-694 was received on July 30, 2007, seventy-seven (77) days after the director issued her decision. As the appeal was untimely filed, it must be rejected.

ORDER: The appeal is rejected.