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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED]
MSC-06-102-15721

Office: PORTLAND, OR

Date: NOV 23 2007

IN RE: Applicant: [REDACTED]

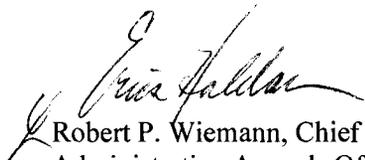
APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

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 Portland, Oregon 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 he 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 his decision that at the time of his interview with a Citizenship and Immigration Services (CIS) officer on September 7, 2006, the applicant stated that he was absent from the United States for six (6) months in 1987. It is noted here that the record of sworn statement in the record indicates that the applicant had a one (1) to two (2) month absence in 1986, re-entered the United States, remained for six (6) months, and then left for six (6) months. The director stated that his office found that, since this absence in 1987 exceeded forty-five (45) days, this indicated that the applicant had failed to maintain continuous residence pursuant to 8 C.F.R. 245a.1(c)(1)(i). Therefore, the director found the applicant was ineligible to adjust status to that of a Temporary Resident and denied the application.

It is noted here that an applicant for Temporary Resident Status must establish entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status since such date and through the date the application is filed. Section 245A(a)(2) of the Immigration and Nationality Act (Act), 8 U.S.C. § 1255a(a)(2). It is further noted that for purposes of establishing residence "until the date of filing" shall mean until the date the alien attempted to file a completed Form I-687 application and fee or was caused not to timely file, during the original legalization application period of May 5, 1987 to May 4, 1988, consistent with the class member definitions set forth in the CSS/Newman Settlement Agreements. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10. It is not clear from the record when this applicant attempted to file his Form I-687. Therefore, it cannot be determined if this six (6) month absence in 1987 occurred within his requisite period. However, the applicant has stated that he was absent for more than one (1) month and possibly two (2) months in 1986, casting doubt on whether he maintained continuous residence in the United States during the requisite period.

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 his decision on September 14, 2006, and mailed it to the applicant's address of record. It is noted that the director's decision indicates that the filing fee for a Form I-694 is \$385.00. The applicant's appeal was first received Wednesday, October 18, 2006, thirty-four (34) days after the notice of decision was issued. The record shows that the applicant's I-694 Notice of Appeal of Decision was rejected because the check amount enclosed with the appeal was incorrect. The rejection notice shows that the correct filing fee is \$110.00. Though it is clear that the director erred in citing the filing fee for the Form I-694 in his decision letter, 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. These instructions cite the proper fee amount and provide instructions for checking for fee updates both online or through a telephonic customer service number. 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 Form I-694 was subsequently filed October 26, 2006, forty-two (42) days after the director issued his decision. As the appeal was untimely filed upon its first submission, it must be rejected.

ORDER: The appeal is rejected.