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U.S. Citizenship
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Services

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FILE:

MSC-06-047-13879

Office: HARTFORD, CT

Date:

NOV 28 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:

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 pursuant to the terms of the settlement agreements reached in *Catholic Social Services, Inc., et al., v. Ridge, et al.*, CIV. NO. S-86-1343-LKK (E.D. Cal) January 23, 2004, and *Felicity Mary Newman, et al., v. United States Immigration and Citizenship Services, et al.*, CIV. NO. 87-4757-WDK (C.D. Cal) February 17, 2004 (CSS/Newman Settlement Agreements), was denied by the Field Office Director, Hartford, Connecticut. The decision is now before the Administrative Appeals Office (AAO) 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 she maintained continuous residence in the United States from January 1, 1982 to a period of time between May 5, 1987 and May 4, 1988. It is noted here that applicants must prove by a preponderance of the evidence that they resided continuously in the United States for the duration of the requisite period pursuant to the regulation at 8 C.F.R. § 245a.2(d)(5). To meet this burden of proof, applicants must submit evidence apart from their own testimony pursuant to the regulation at 8 C.F.R. § 245a.2(d)(6). The director noted in his Notice of Decision that when the applicant was interviewed by a Citizenship and Immigration Services (CIS) officer on January 30, 2007, she testified under oath that she entered the United States for the first time in 1981. However, the director found that the applicant had not submitted sufficient evidence to would allow her to prove, by a preponderance of the evidence, that she entered the United States on a date prior to January 1, 1982 and then resided continuously for the duration of the requisite period. Therefore, the director found she was ineligible to adjust status to that of a Temporary Resident and denied the application.

In this case, the director determined that the applicant was not a CSS/Newman (LULAC) class member, but he adjudicated the Form I-687 application on the merits. As a result, the director is found not to have denied the application solely on the basis of having made a determination that the applicant was not a class member.

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. 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 February 9, 2007, and mailed it to the applicant's address of record. The record does not clearly indicate when the applicant's I-694 Notice of Appeal of Decision was first received by the Service. However, the record shows that the applicant's representative was informed that because that Form I-694 was not

submitted with the proper filing fee, it must be resubmitted with the proper fee. This notice was sent to the applicant's representative on March 13, 2007.

The regulations 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. You may correct the deficiency and resubmit the form I-694. Any application or petition is not considered properly filed until accepted by USCIS.¹

The applicant's properly filed appeal was received March 29, 2007, forty-eight (48) days after the director issued his decision. As the appeal was untimely filed, it must be rejected.

ORDER: The appeal is rejected.

¹ Note, however, that a rejected application or petition will not retain a filing date. 8 C.F.R. § 103.2(a)(7).