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U.S. Citizenship
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Services

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FILE: [Redacted]
MSC 05 232 12896

Office: NEW YORK

Date:

OCT 04 2007

IN RE: Applicant: [Redacted]

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:



NEW YORK, NY 10007

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-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 District Director, New York. The applicant filed an appeal, which the director rejected. The matter is now before the Administrative Appeals Office (AAO) for review. The AAO hereby withdraws the director's decision 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 director determined that the applicant failed to appear for his scheduled interview with a legalization officer and, therefore, denied the application for abandonment pursuant to the provisions in 8 C.F.R. § 103.2(b)(15).

The director subsequently rejected the appeal based on 8 C.F.R. § 103.2(b)(15), which states that a denial due to abandonment may not be appealed. 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 whose decision was being appealed.

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 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).

The director issued the notice of denial on January 23, 2006 and mailed it to the applicant's address of record. The appeal was initially received on March 9, 2006, or 45 days after the notice of denial was issued. The record shows that the appeal was returned to applicant. The applicant resubmitted the appeal, which was received on March 21, 2006. Regardless, the appeal, when initially filed, was untimely and must be rejected.

ORDER: The appeal is rejected.