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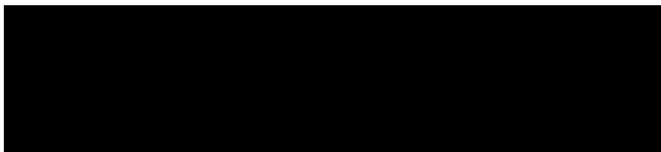
FILE:

MSC-05-210-10356

Office: CHICAGO, IL Date:

IN RE:

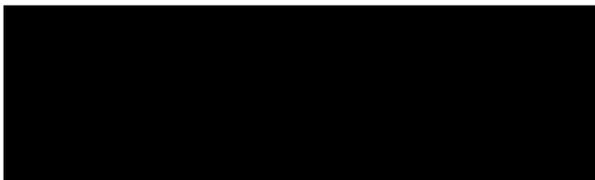
Applicant:



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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for temporary resident status was denied by the Director of the Chicago 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 Notice of Intent to Deny (NOID) that the applicant failed to establish that he had submitted a timely written claim for class membership in either the CSS Newman, LULAC or Zambrano legalization class action lawsuits. The director went on to say that he found the applicant had not met his burden of establishing by a preponderance of the evidence that he had maintained continuous residence in the United States during the requisite period. The director also stated that there is not evidence in Service records that the applicant's father previously applied for legalization benefits. However, it is noted here that if the applicant's father had been "front-desked" or discouraged from filing, there would likely not be a record of him filing for benefits during the original filing period as he would have been prevented from doing so. Therefore, the director denied the applicant's Application for Status as a Temporary Resident.

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 December 8, 2005, and mailed it to the applicant's address of record. The record indicates that the applicant's Form I-694 Notice of Appeal of Decision was received on February 7, 2006. However, the record shows that it was rejected at that time because the applicant did not indicate the receipt number of the application that his appeal was in reference to. It is noted here that applicant's are not required to show this receipt number on their Forms I-694. Therefore, the AAO will consider the applicant's date of filing to be February 7, 2006. However, as this date occurred sixty-one (61) days after the director issued his notice of decision, the appeal was untimely filed, and must be rejected.

ORDER: The appeal is rejected.