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U.S. Citizenship
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Services

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OCT 12 2007

FILE: [REDACTED]
MSC-05-284-10155

Office: NATIONAL BENEFITS CENTER Date:

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: SELF-REPRESENTED

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 National Benefits Center 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 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. Applicants for Temporary Resident Status bear the burden of proving by a preponderance of the evidence that they have resided in the United States for the requisite period. 8 C.F.R. § 245a.2(d)(5). To meet their burden of proof, applicants must provide evidence of eligibility apart from their own testimony. 8 C.F.R. § 245a.2(d)(6). The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of documentation that an applicant may submit to establish proof of continuous residence in the United States during the requisite period. Here, the director noted in his Notice of Intent to Deny (NOID) that the applicant did not provide any evidence other than her own testimony that proved that she had maintained continuous residence in the United States during the requisite period. The director granted the applicant thirty (30) days within which to submit additional evidence in support of her application. Though the director noted that he received an additional affidavit in support of the applicant's claim of having maintained continuous residence during the requisite period, he noted that this evidence was not relevant to the requisite period. Therefore, the director found the applicant did not overcome his reasons for denial as stated in his NOID, and he denied the application.

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 May 19, 2006, and mailed it to the applicant's address of record. The applicant's appeal was first received timely on June 20, 2006, thirty-two (32) days after the notice of decision was issued. However, it was rejected at that time because it was not fully completed. The rejection notice in the record indicates her Form I-694 was rejected because the applicant failed to show what decision she was appealing, what her last name was and to indicate whether she was providing a written brief. The instructions for filing the form I-694 clearly indicate that once a Form I-694 has been accepted, it will be checked for completeness, including submission of the required initial evidence. If an applicant does not completely fill out the form, or files it without required initial evidence, he or she will not establish a basis for eligibility and the Service may

deny his or her Form I-694. Here, rather than denying the applicant's Form I-694, the Service requested that the applicant resubmit that form after completing it. The applicant completed her Form I-694 and resubmitted it. Once it was resubmitted, the Service received the applicant's Form I-694 August 29, 2006, seventy-one (71) days after the director's notice of decision was issued. Therefore, the appeal was untimely filed, and must be rejected.

ORDER: The appeal is rejected.