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U.S. Citizenship  
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Services

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[Redacted]

FILE:

[Redacted]

Office: NEWARK, NJ

Date: OCT 22 2007

MSC-05-284-10021

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, Newark, New Jersey District Office, and that decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The director denied the application because she found the evidence submitted with the application was insufficient to establish eligibility for Temporary Resident Status pursuant to the terms of the CSS/Newman Settlement Agreements. Specifically, in her Notice of Intent to Deny (NOID) the director stated that the affidavits submitted by the applicant were insufficiently detailed to prove, by a preponderance of the evidence that the applicant resided continuously in the United States for the duration of the requisite period. The director went on to say that though the applicant claimed to have entered the United States when she was eleven (11) years old, she did not submit school records to substantiate her claim of having resided in the United States when she was of school age. The director also noted that the applicant submitted a letter with her application stating that she was discouraged from filing during the original legalization filing period because she had traveled outside the United States during the statutory period. However, the director found that both the applicant's Form I-687 and her testimony given at the time of her interview with a Citizenship and Immigration Services (CIS) officer indicated that the applicant had not traveled outside the United States during the statutory period. The director went on to say that the applicant had not met her burden of establishing by a preponderance of the evidence that she resided continuously in the United States for the duration of the requisite period as the regulation at 8 C.F.R. § 245a.2(d)(5) requires applicants for adjustment of status to Temporary Residents to do. The director granted the applicant thirty (30) days within which to submit additional evidence in support of her application. As the applicant did not submit evidence that was relevant to establishing her residence in the United States during the requisite period, the director determined she did not overcome her reasons for denial as stated in her NOID and 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 her decision on July 12, 2006, and mailed it to the applicant's address of record. The applicant's Form I-290B, Notice of Appeal to the Administrative Appeals Unit was first received timely on August 14, 2006, thirty-three (33) days after the notice of decision was issued. However, the record shows that the applicant's Form I-290B was rejected the Service on August 23, 2006 because the applicant submitted the wrong fee with her form. The instructions for filing the Form I-290B clearly indicate that any appeal that is not signed or accompanied by the correct fee will be rejected with a notice that the appeal is deficient. Therefore, the applicant's appeal was rejected for legitimate reasons. The applicant's resubmitted Form I-290B with the correct fee was subsequently received by the Service on September 28, 2006, seventy-eight (78) days after the director issued her decision. Therefore, as the appeal was untimely filed, it must be rejected.

**ORDER:** The appeal is rejected.