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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: 
MSC-06-089-14868

Office: LOS ANGELES

Date: OCT 25 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.

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

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for Temporary Resident Status was denied by the Director of the Los Angeles, California 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 she 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 her Notice of Decision that testimony given by the applicant at the time of his interview with a Citizenship and Immigration Services (CIS) officer on May 5, 2006 regarding how and when he met his employer was not consistent with testimony in the employment letter submitted by the applicant. The director also noted that the date of birth of the applicant's biological daughter to a woman whom the applicant testified had previously never entered the United States indicated that he must have been in Mexico between April and May of 1988 to conceive that child. It is noted here that the applicant's Form I-687 shows an absence at that time. However, the director's decision letter states that the applicant did not indicate an absence occurred at that time during his interview with the CIS officer. The director went on to say that inconsistencies within evidence submitted by the applicant cast doubt on the credibility of statements made by and documents submitted by the applicant. The director found that therefore, the applicant did not meet his burden of establishing by a preponderance of the evidence that he continuously resided 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 to Temporary Resident Status to do. Therefore, the director denied the application.

On appeal, the applicant submits three (3) previously submitted affidavits and a statement. In his statement he asserts that he believes that he is eligible to apply to adjust to Temporary Resident Status. He goes on to say that he believes the director erred in her decision because he was consistent regarding his employment. He goes on to state that at the time of his interview he told the CIS officer that he did not remember exactly how many times he departed the United States during the requisite period because he tried to visit his family every year since he entered the United States. It is noted here that while the applicant claims to have entered the United States in 1981, he showed on his Form I-687 that he was absent from the United States only three (3) times, in 1987, 1988 and 1989. The applicant's statement that he tried to go back to Mexico every year since he entered the United States casts doubt on whether the applicant fully and completely represented his absences on his Form I-687. The applicant provided no additional new evidence to overcome the reasons for denial of his 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 May 6, 2006, and mailed it to the applicant's and his attorney's addresses of record. The applicant's Form I-694 Notice of Appeal of Decision was first received timely on May 23, 2006, seventeen (17) days after the director issued her decision. Though the record does not indicate why the applicant's Form I-694 was rejected, it shows that the form was subsequently resubmitted two times and that it was finally accepted by the Service on June 19, 2006, forty-four (44) days after the director issued her decision. As the appeal was untimely filed, it must be rejected.

It is noted here that, as stated in 8 C.F.R. § 103.3(a)(3)(iv), any appeal which is filed that fails to state the reason for appeal, or is patently frivolous, will be summarily dismissed. A review of the decision reveals the director accurately set forth a legitimate basis for denial of the application. On appeal, the applicant has not presented additional evidence. Nor has he addressed the grounds stated for denial. Had the applicant's appeal been filed timely, it would have therefore been summarily dismissed.

ORDER: The appeal is rejected.