

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



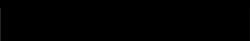
U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

41



FILE:



MSC 06 097 10775

Office: NEW YORK

Date:

SEP 07 2007

IN RE:

Applicant:



PETITION: 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. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if the matter 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, Newark, New Jersey, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

On appeal, the applicant states that he failed to appear for his interview because he was ill.

The applicant filed a motion to reopen on Form I-290B, Notice of Appeal to the Administrative Appeals Unit. However, the regulation at 8 C.F.R. § 245a.2(q) does not permit consideration of an applicant's motion to reopen or reconsider decisions on applications for temporary residence under section 245A of the Immigration and Nationality Act.

Additionally, the regulation at 8 C.F.R. § 103.2(b)(13) provides that if an applicant or petitioner fails to appear for an interview, a request to reschedule is not received by Citizenship and Immigration Service prior to the interview, and the applicant or petitioner has not withdrawn the application or petition, the application or petition shall be considered abandoned and, accordingly, shall be denied. A denial due to abandonment may not be appealed. 8 C.F.R. § 103.2(b)(15).

Furthermore, the appeal is untimely filed. The regulation at 8 C.F.R. § 245a.2(p) provides that any appeal of an adverse decision shall be submitted to the service center with the required fee 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. The thirty-day period for submitting an appeal begins three days after the notice of denial is mailed.

The director issued the Notice of Denial on September 9, 2006 and mailed it to the applicant's address of record. The appeal was received on January 5, 2007, 118 days after the director issued her decision. Therefore, the appeal was untimely filed, and must be rejected.

The record reflects that the applicant filed a Form I-485, Application to Register Permanent Resident or Adjust Status, on February 3, 2002, which was denied by the district director on May 21, 2005. The applicant's appeal of that decision is not at issue in this decision.

**ORDER:** The appeal is rejected.