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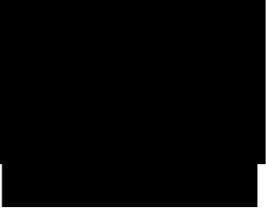


U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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FILE:



Office: HOUSTON

Date:

SEP 13 2007

MSC 05 132 11028

IN RE:

Applicant:



APPLICATION:

Application for Temporary Resident Status under 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 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 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, Houston, Texas. The decision is now before the Administrative Appeals Office on appeal. The appeal will be rejected.

The director denied the application based on the applicant's failure to submit evidence and/or information that would overcome the previously issued notice of intent to deny in which the director determined that the evidence submitted in support of the applicant's claim was "either contrived or altered."

An adverse decision on an application for 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. 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. 8 C.F.R. § 103.5a(b). An appeal received after the thirty-day period has tolled will not be accepted. See 8 C.F.R. § 245a.2(p).

The director issued the notice of denial on January 18, 2006 and mailed it to the applicant's last known address of record and to the address of the applicant's last known attorney of record. It is noted that the director erroneously informed the applicant that no right to appeal lies with this denial.¹ Nevertheless, the applicant disregarded the director's erroneous comment and proceeded to appeal the director's decision.² The appeal was received on June 23, 2006, more than five months after the notice of denial was issued. While Form G-28, Notice of Entry of Appearance as Attorney or Representative, submitted by [REDACTED] contains the applicant's most current address, the Form G-28 is dated February 16, 2006 and was clearly submitted four weeks after the director's decision was issued. There is no indication that the applicant attempted to notify Citizenship and Immigration Services of his change of address prior to the date of the denial. Therefore, the appeal was untimely filed, and must be rejected.

ORDER: The appeal is rejected.

¹ This determination was presumably based on the provisions of 8 C.F.R. § 103.2(b)(15), which instruct that any appeal of a denial that is based on abandonment must be rejected.

² The record shows that the applicant filed appeal Form I-290B instead of the Form I-694, which is the proper form used to appeal adverse decisions in legalization matters. This error is merely noted for the record and does not serve as the basis for the decision in the present matter.