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U.S. Citizenship
and Immigration
Services

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FILE:

MSC-06-102-16469

Office: NEW YORK

Date:

SEP 24 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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for temporary resident status was denied by the Director of the New York 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. The director noted in her Notice of Intent to Deny (NOID) that applicant had not met his burden of establishing that he had maintained continuous residence in the United States during the requisite period as the affidavits he submitted appeared neither credible nor amenable to verification. The director granted the applicant thirty (30) days within which to submit additional evidence in support of his application. In denying the application, the director noted that though her office received additional evidence in support of the applicant's claim of having maintained continuous residence in the United States during the requisite period in response to her NOID, when the Service attempted to verify information contained in one of these documents, a billing statement from St. Vincent's Medical Center of New York, a representative from that hospital stated the applicant had never been a patient there. The director stated that this indicated a misrepresentation and noted other inconsistencies in the evidence submitted by the applicant in support of his claim of having maintained continuous residence in the United States during the requisite period. Because of these inconsistencies found in evidence in the record, the director found the applicant did not meet his burden of establishing by a preponderance of the evidence that he was eligible for adjustment to temporary status under the provisions in the regulation at 8 C.F.R. § 245a.2(d)(5) and denied 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 July 25, 2006, and mailed it to the applicant's address of record. The applicant's appeal was received August 29, 2006, thirty-five (35) days after the notice of decision was issued. Therefore, the appeal was untimely filed, and must be rejected.

ORDER: The appeal is rejected.