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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

41

[REDACTED]

FILE:

MSC-05-129-10024

Office: NEW YORK

Date:

SEP 24 2007

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:

[REDACTED]

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. Specifically, the director noted in her Notice of Intent to Deny (NOID) that applicant had not met his burden of establishing by a preponderance of the evidence that he had maintained continuous residence in the United States during the requisite period as the applicant had submitted affidavits from two (2) individuals, the applicant's brother and his sister-in-law, in support of this claim, but had not established that either affiant was present in the United States during the requisite period. The director granted the applicant thirty (30) days within which to submit additional evidence in support of his application. However, the director found that the additional evidence submitted by the applicant did not overcome her reasons for denial as stated in her NOID and therefore, she 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 August 3, 2006, and mailed it to the applicant and his representative at their addresses of record. The applicant's appeal was received September 6, 2006, thirty-four (34) days after the notice of decision was issued. Therefore, the appeal was untimely filed, and must be rejected.

ORDER: The appeal is rejected.