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U.S. Citizenship
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Services

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[REDACTED]

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FILE: [REDACTED]
MSC-05-230-14650

Office: NEW YORK

Date: SEP 27 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.

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 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 the 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. In saying this, the director noted that the applicant was interviewed on two occasions, the first time on March 2, 2004 and the second time on October 25, 2005. At his interview on March 2, 2004 he stated that he first entered the United States in the summer of 1981 but at the time of his subsequent interview on October 25, 2005, he stated that he first entered the United States in January of 1981. The director notified the applicant that she intended to deny his application because of this inconsistency and then granted him thirty (30) days within which to submit additional evidence in support of his application. In denying the application, the director noted that she found the additional evidence submitted by the applicant in support of his application was not sufficient to overcome her reasons for denial as stated in her NOID. Therefore, she 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 March 11, 2006, and mailed it to the applicant's and his attorney's addresses of record. The record indicates that the applicant sent his appeal to the incorrect address, which delayed the service receiving his Form I-694. Instructions for filing the Form I-694 clearly state that applicant's should send their Form I-694 to the address that appears on their denial notice. Page two (2) of this applicant's denial notice indicates that appeals should be sent to [REDACTED]. Here, the applicant sent his appeal to the New York District Office. The Service received it there on April 18, 2006, thirty-eight (38) days after the director's decision, and did not receive it in Chicago until May 15, 2006, sixty-five (65) days after the director's decision. Therefore, the appeal was untimely filed, and must be rejected.

ORDER: The appeal is rejected.