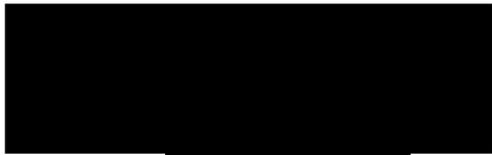




U.S. Citizenship
and Immigration
Services

identifying data related to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY



41

FILE:

MSC 05 231 16026

Office: CHICAGO

Date:

SEP 28 2007

IN RE:

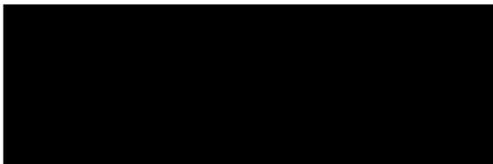
Applicant:



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.


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. [REDACTED] (E.D. Cal) January 23, 2004, and *Felicity Mary Newman, et al., v. United States Immigration and Citizenship Services, et al.*, CIV. NO. [REDACTED] (C.D. Cal) February 17, 2004 (CSS/Newman Settlement Agreements), was denied by the District Director, Chicago. The decision is now before the Administrative Appeals Office on appeal. The appeal will be rejected.

The director determined the applicant had not demonstrated that he had continuously resided in the United States in an unlawful status since before January 1, 1982 through the date that he attempted to file a Form I-687, Application for Status as a Temporary Resident, with the Immigration and Naturalization Service or the Service (now Citizenship and Immigration Services or CIS) in the original legalization application period of May 5, 1987 to May 4, 1988. Therefore, the director determined that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements and denied the application.

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 September 15, 2005 and mailed it to the applicant's address of record. The appeal was received on February 23, 2006, over five months after the notice of denial was issued. Therefore, the appeal was untimely filed, and must be rejected.

Additionally, the record shows that the applicant's appeal was improperly filed. First, instead of using a Form I-694, as prescribed in 8 C.F.R. § 103.3(a)(3)(ii), the applicant used the Form I-290B, which is reserved for appeals to the AAO in all cases other than those of special agricultural workers and legalization applicants.¹ Second, and more importantly, the applicant's appeal Form I-290B was accompanied by a filing fee of \$385. However, the fee to file an appeal from a denial in a legalization matter at the time the applicant filed the appeal was \$105. 8 C.F.R. § 103.7(b)(1) (2007). Pursuant to the provisions of 8 C.F.R. § 103.2(a)(7)(i), CIS will reject any petition or application filed with the incorrect filing fee. In the present matter, the applicant's appeal was improperly filed, as it was accompanied by the wrong fee.

Accordingly, the appeal shall be rejected based on its untimely and improper filing.

ORDER: The appeal is rejected.

¹ Although the AAO notes the applicant's filing of the appeal using the wrong form, this shall not serve as one of the basis for rejecting the appeal. The applicant's error is merely noted for the record.