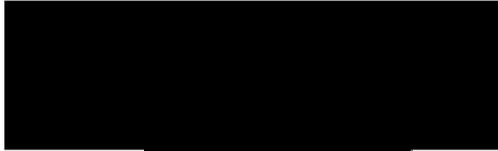




U.S. Citizenship
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Services

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41

FILE: [REDACTED]
MSC-05-236-10372

Office: LOS ANGELES

Date: **SEP 28 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: SELF-REPRESENTED

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 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 Director of the Los Angeles 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 at the time of the applicant's interview with a CIS officer on December 6, 2005, he stated that he did not attempt to file for legalization during the original filing period because he did not intend to continue to reside in the United States. The director noted that the regulation at 8 C.F.R. § 245a.2(d)(5) states that applicants for temporary resident status bear the burden of establishing by a preponderance of the evidence that they maintained continuous unlawful residence in the United States for the duration of the requisite period. Here, the director stated that this applicant did not meet that burden. The director went on to refer to the regulation at 8 C.F.R. § 245a.2(d)(6), which states applicant's applying for adjustment to temporary resident status must submit credible evidence apart from their own testimony in order to meet their burden of proof. The director also noted that here, the applicant did not do so. The director granted the applicant thirty (30) days within which to submit additional evidence in support of his application. Though the director recognized that the applicant submitted an affidavit from [REDACTED] as additional evidence in response to her NOID, she noted that in this affidavit the affiant stated that he did not remember when he met the applicant. It is noted here that the AAO found that this affidavit stated that the affiant met the applicant in 1981 at a New Year's party that occurred at the applicant's brother's house. It is also noted that the affidavit went on to describe the event. It was not noted by the director but it is noted here that the applicant also submitted a personal statement in which he refuted the director's claim that he stated he did not apply for legalization during the original filing period, stating that there were interpretation problems during the interview. The director found that the applicant had still failed to satisfy his burden of proof as stated 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 March 20, 2006, and mailed it to the applicant's address of record. The appeal was first received timely on April 20, 2006, thirty-one (31) days after the notice of decision was issued. However, the appeal was rejected by the Service because the check submitted to pay the filing fee was not signed and therefore the filing fee had not been properly paid. The instructions for filing the Form I-694 clearly indicate that any Form I-694 that is not signed or accompanied by the correct fee will be rejected with a notice that the Form I-694 is deficient. As the applicant submitted his Form I-694 without the correct fee, his first submission of this form was not properly filed. Therefore, the applicant's appeal was rejected for legitimate reasons. The appeal was subsequently filed on May 10, 2006, fifty-one (51) days after the notice of decision was issued. Therefore, the appeal was untimely filed, and must be rejected.

ORDER: The appeal is rejected.