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U.S. Citizenship
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FILE: [Redacted] MSC-05-201-14457

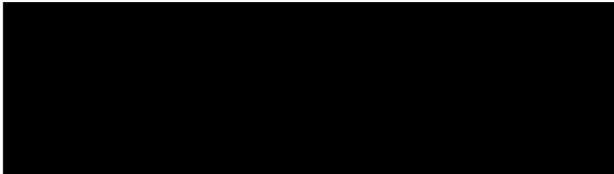
Office: LOS ANGELES

Date:

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:



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 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 prior to 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 entered the United States prior to January 1, 1982. The director granted the applicant thirty (30) days within which to submit additional evidence in support of his application. Though the director did not provide specific examples of why she found the applicant did not meet this burden, it is noted here that the AAO found that evidence submitted by the applicant was not consistent regarding his employment, as a Form I-687 signed in 1993 by the applicant indicates that he was employed as a tailor from October 1981 to October 1989 but an affidavit from [REDACTED] submitted in September of 1995 states that the applicant was working as a freight unloader beginning in October of 1981. It is further noted that the applicant was born January 14, 1970 and therefore he would have been eleven (11) years old in 1981. Because the applicant has presented inconsistent testimony regarding his employment during the requisite period, and because it is not plausible that an eleven (11) year old would be employed unloading freight, doubt is cast on the reliability of the evidence he has submitted in support of his claim of having maintained continuous residence in the United States during the requisite period. The director did not note whether she received additional evidence in support of his application in response to her NOID. However, it appears she found the applicant did not overcome her reasons for denial as stated in her NOID and therefore, the director 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 October 13, 2005, and mailed it to the applicant's address of record. The applicant's appeal was first received on February 13, 2006. The Service rejected the applicant's appeal at that time, indicating the application was being rejected because it did not contain the receipt number associated with the decision the applicant was appealing. However, it is noted here that the applicant is not required to

show the receipt number on his Form I-694 Notice of Appeal of Decision. Therefore, the AAO considers the appeal to have been properly filed on February 13, 2006. However, because February 13, 2006 was one hundred twenty-three (123) days after the notice of decision was issued, the appeal was untimely filed, and must be rejected.

ORDER: The appeal is rejected.