

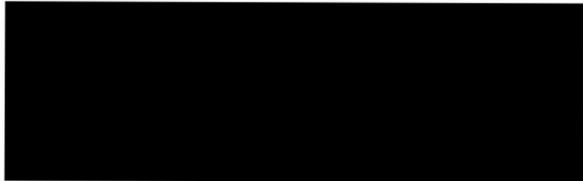


U.S. Citizenship
and Immigration
Services

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prevent clearly unwarranted
invasion of personal privacy**

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FILE: [Redacted]
MSC-06-102-12899

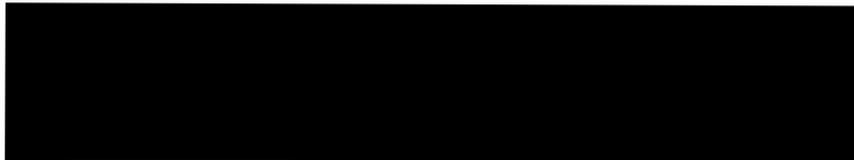
Office: LOS ANGELES (SACRAMENTO)

Date: FEB 07 2008

IN RE: Applicant: [Redacted]

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, Director
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 Acting Field Office Director, Sacramento, California. The decision is now before the Administrative Appeals Office (AAO) on appeal.¹ The appeal will be rejected as untimely filed.

The applicant submitted a Form I-687, Application for Status as a Temporary Resident Under Section 245A of the Immigration and Nationality Act (Act), and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet, on January 10, 2006. The director issued a Notice of Intent to Deny (NOID) on April 11, 2007, and a Notice of Decision on August 17, 2007. The NOID summarized the eligibility requirements for temporary resident status and concluded that the applicant had failed to provide evidence that he met those requirements; it did not refer to the evidence submitted by the applicant, comprised of affidavits, his Form I-687 Application, and his statements during his interview with U.S. Citizenship and Immigration Services (CIS). The applicant submitted additional evidence, comprised of detailed affidavits obtained from Mexico, in response to the NOID. The director again failed to consider the evidence and issued the Notice of Decision with the following conclusion: "On May 25, 2007, the Service received your response in rebuttal to the NOID. However, your response to the NOID was received fourteen (14) days after the allotted time. Accordingly, your response was not submitted timely. Therefore, your application for temporary resident is hereby denied."

In his Notice of Appeal, filed on September 20, 2007, the applicant, through counsel, explained that the evidence from Mexico had been lost in the mail and needed to be rewritten and sent again, thus delaying submission to CIS. In her Brief, counsel asserts that the applicant has established by a preponderance of the evidence that he is eligible for temporary resident status and summarizes the relevant evidence of the applicant's residence in the United States since his first entry in 1978. The applicant has provided a reasonable explanation for the 14-day delay in responding to the director's NOID, and the director's denial should have addressed the applicant's response as well as the evidence submitted with the I-687 Application.

The AAO does not have jurisdiction to reach a decision on appeal based on an evaluation of the evidence in this case, as the appeal of the director's decision to deny was untimely filed and must be rejected. An adverse decision on an application for temporary resident status may be appealed to the AAO; the appeal with the required fee must be filed within thirty (30) days after service of the notice of denial. 8 C.F.R. § 245a.2(p). If the decision, or notice of denial, was mailed, the applicant is afforded an additional three (3) days, and the appeal must be filed within thirty-three (33) days. *See* 8 C.F.R. § 103.5a(b). The date of

¹ Procedurally, before the appeal was forwarded to the Administrative Appeals Office (AAO) as required, it was incorrectly rejected by the Missouri Service Center (MSC) on October 31, 2007 as untimely filed. The MSC has no jurisdiction over an appeal. In response to the rejection, counsel submitted Form I-290B, Notice of Appeal or Motion, and Brief, to the MSC requesting that the rejection be reconsidered. In response, the MSC withdrew its decision of October 31, 2007 and forwarded the appeal to the AAO.

filing is not the date of mailing, but the date of actual receipt. 8 C.F.R. § 103.2(a)(7)(i). An appeal that is not timely filed will not be accepted. 8 C.F.R. § 245a.2(p).

The director issued the Notice of Decision on August 17, 2007 and mailed it to the applicant's and counsel's addresses of record. The appeal was filed on September 20, 2007, thirty-four (34) days later. Therefore, the appeal was untimely filed and must be rejected.

The AAO notes that the director may *sua sponte* reopen any proceeding under his jurisdiction under 8 C.F.R. § 245a and reconsider any decision rendered in such proceeding. 8 C.F.R. § 103.5(b); 8 C.F.R. § 245a.2(q). Additionally, the director may certify any such decision to the AAO. 8 C.F.R. § 103.4(b); 8 C.F.R. § 245a.2(r).

ORDER: The appeal is rejected.