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FILE:

MSC 05 221 10812

Office: NEW YORK

Date: JUN 05 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:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office on your appeal. You no longer have a case pending before this office. If your appeal was sustained or the matter was remanded for further action, your file has been returned to the office that originally decided your case, and you will be contacted. If your appeal was dismissed or rejected, your file has been sent to the National Benefits Center. 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 District Director, New York, denied the application for temporary resident status made 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). The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed.

The director denied the application because the applicant failed to provide evidence that he had resided unlawfully in the United States for the requisite period.

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 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 days, and the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b). The date of filing is not the date of mailing, but the date of actual receipt. *See* 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).

In this case, the director issued the notice of denial on July 5, 2006 and mailed it to the applicant's address of record. The appeal was received as properly filed on August 8, 2006, 34 days after the decision of denial was issued. Therefore, the appeal was untimely filed and must be rejected.

The record contains additional issues that were not addressed in the decision of denial. The record shows the following offenses:

On August 13, 1996 the applicant was arrested for disorderly conduct, a violation of section 240.20 of the New York criminal code, and a violation of section 20.453. The offense covered in that section at that time is unknown to this office, except that it was a vehicular misdemeanor. A certificate of disposition in the record shows that on September 12, 1996 the applicant pled guilty to disorderly conduct. (Docket number [REDACTED]) The disposition of the vehicular misdemeanor is unknown to this office.

On September 27, 1996 the applicant was arrested for a violation of section 165.71 of the New York criminal code, trademark counterfeiting in the third degree, a misdemeanor, and a violation of section 20.453. The offense covered in section 20.453 at that time is unknown to this office, except that it was a vehicular misdemeanor. A certificate of disposition in the record indicates that those charges were dismissed and sealed. (Docket number [REDACTED])

On November 16, 1996 the applicant was arrested for a violation of section 165.71 of the New York criminal code, trademark counterfeiting in the third degree, a misdemeanor, and a violation of section 20.453. The offense covered in that section at that time is unknown to this office, except that it was a vehicular misdemeanor. A certificate of disposition in the record shows that on April 28, 1997 the applicant pled guilty to a violation of section 240.20 of the New York

criminal code, disorderly conduct, and was sentenced to five days of community service. (Docket number [REDACTED]) The disposition of the other two offenses is unknown to this office.

On November 23, 1996 the applicant was arrested for a violation of section 165.71 of the New York criminal code, trademark counterfeiting in the third degree, a misdemeanor, and a violation of section 20.453. The offense covered in that section at that time is unknown to this office, except that it was a vehicular misdemeanor. A certificate of disposition in the record shows that, on April 28, 1997, the applicant pled guilty to a violation of section 240.20 of the New York criminal code, disorderly conduct. (Docket number [REDACTED])

The regulation at 8 C.F.R. § 245a.2(c)(1) states that the application for temporary resident status of an alien who has been convicted of three or more misdemeanors may not be approved. The applicant was convicted, pursuant to his pleas, of three counts of violating section 240.20 of the New York criminal code, disorderly conduct, one count on September 12, 1996, and two additional counts on April 28, 1997.

The regulation at 245a.1(o) defines misdemeanor as a crime committed in the United States punishable by more than five days imprisonment but not more than one year. Section 240.20 of the New York criminal law stipulates that disorderly conduct is a violation, which is an offense lesser than either misdemeanors or felonies, as defined by New York law. Article 70.15(4) of New York penal code, however, states that the maximum penalty for a violation is 15 days. Because a violation of section 240.20 of the New York criminal code is punishable by more than five days imprisonment, it constitutes a misdemeanor for the purpose of the instant adjudication.

The applicant has therefore been convicted of three misdemeanors, and, pursuant to 8 C.F.R. § 245a.2(c)(1), the instant application may not be approved for that reason. The application should have been denied on this additional basis.

The record suggests another basis for denying the instant application that was not addressed in the decision of denial.

On November 22, 2005 the District Director, New York, issued a request for additional evidence. The director requested the dispositions of each of the offenses listed above. The applicant did not provide all of the requested dispositions. As is noted above, the dispositions of some of those offenses remain unknown to this office.

An alien who has been convicted of a felony or three or more misdemeanors in the United States is ineligible for temporary resident status. 8 C.F.R. § 245a.2(c)(1). Thus, an inquiry into the dispositions of the applicant's arrests is an inquiry into a material issue.

Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the application. 8 C.F.R. § 103.2(b)(14). The application should have been denied on this additional basis.



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ORDER: The appeal is rejected.