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[REDACTED]

FILE: [REDACTED]
MSC-05-183-10767

Office: CLEVELAND, OH

Date: OCT 12 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 was denied by the Director of the Cleveland, Ohio 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 he 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 his Notice of Decision that when the applicant was interviewed by a CIS officer on June 20, 2006 he testified under oath that he entered the United States for the first time in May of 1984. It is noted here that an applicant for temporary resident status must establish entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status since such date and through the date the application is filed. Section 245A(a)(2) of the Immigration and Nationality Act (Act), 8 U.S.C. § 1255a(a)(2). Here, the applicant stated that he entered the United States for the first time on a date that occurred after January 1, 1982. Therefore, the director found the applicant was ineligible to adjust status to that of a Temporary Resident 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 his decision on June 28, 2006, and mailed it to the applicant's address of record. The applicant's appeal was first received Tuesday, August 1, 2006, thirty-four (34) days after the notice of decision was issued. The record shows that the applicant's I-694 Notice of Appeal of Decision was rejected multiple times by the Service after this first submission. The record also shows that the applicant felt that these rejections were in error. However, as the appeal was untimely filed upon its first submission, it must be rejected.

ORDER: The appeal is rejected.