



U.S. Citizenship
and Immigration
Services

[REDACTED]

FILE:

[REDACTED]

Office: BOSTON, MA

4
OCT 09 2007
Date:

MSC 05 256 11077

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:

[REDACTED]

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 Boston 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 the applicant did not establish, by a preponderance of the evidence, that she 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 the applicant stated at the time of her interview with a CIS officer on December 7, 2005 that she left the United States in 1983 and remained outside of the United States until 1986, which constituted a break in continuous residence. In saying this, the director cited the regulation at 8 C.F.R. § 245a.2(d)(5) which states in pertinent part that applicants for adjustment to temporary resident status must prove by a preponderance of the evidence that they have resided continuously in the United States for the duration of the requisite period and the regulation at 8 C.F.R. § 245a.2(6)(i) which states that applicants shall be regarded as having resided continuously in the United States if no single absence has exceeded forty-five (45) days. Here, the director noted that the applicant's claimed absence of approximately three (3) years indicated that she failed to establish that she resided continuously in the United States for the duration of the requisite period. Therefore, the director denied the applicant's Application for Status as a Temporary Resident.

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 February 28, 2006 and sent it by certified mail to the applicant's address of record. The applicant's appeal was received on Friday, April 7, 2006, thirty-eight (38) days after the notice of decision was issued. Therefore, the appeal was untimely filed and must be rejected.

ORDER: The appeal is rejected.