

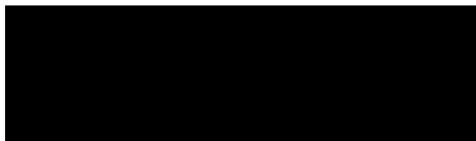
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
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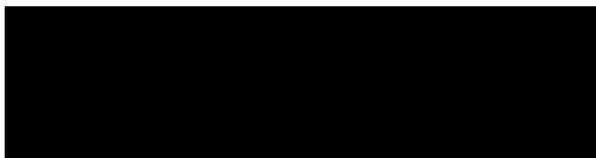
FILE: MSC-05-238-10532

Office: NEW YORK

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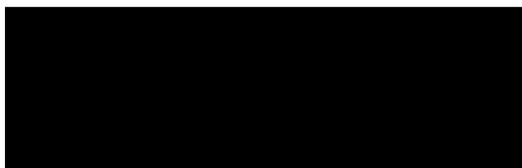
SEP 24 2007

IN RE: Applicant:



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 New York 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 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 had not met his burden of establishing by a preponderance of the evidence that he had maintained continuous residence in the United States during the requisite period. In saying this she noted both that the applicant's affidavits submitted in support of his application were not amenable to verification and that the applicant, who stated that he did not leave the United States between March of 1981 and 1987, had a child who was born in Ecuador in 1982. When questioned about this seemingly inconsistent fact at the time of his interview, the applicant stated that his wife had visited him in the United States, but he could not provide the dates of her visit. The director granted the applicant thirty (30) days within which to submit additional evidence in support of his application. However, the applicant did not submit additional evidence. Therefore, the director found the applicant did not overcome her reasons for denial as stated in her NOID and 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 July 24, 2006, and mailed it to the applicant and his attorney at their addresses of record. The applicant's appeal was received August 29, 2006, thirty-six (36) days after the notice of decision was issued. Therefore, the appeal was untimely filed, and must be rejected.

ORDER: The appeal is rejected.