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FILE: 
MSC-06-097-14344

Office: CHICAGO, IL

Date: SEP 27 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 Chicago District Office and that decision is now before the Administrative Appeals Office on appeal. The appeal will be rejected.

The director 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 stated in her Notice of Decision to Deny that though the applicant submitted affidavits in support of his claim of having maintained continuous residence during the requisite period, these affidavits contained information that was not verifiable when affiants were contacted by the Service. In saying this, the director noted that one affiant, [REDACTED] stated in his affidavit that he met the applicant in 1980, but when he was contacted by the Service he stated that he himself did not enter the United States until 1985 and that he met the applicant at that time. Similarly, the director noted that affiant [REDACTED] stated in his affidavit that he met the applicant at a wedding in 1980, but when he was contacted by the Service he stated that he did not meet him until 1981 when the applicant was working in a construction company. The director found that these discrepancies cast doubt on evidence submitted by the applicant and therefore, she found that he 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. For those reasons, 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 September 22, 2006, and mailed it to the applicant's address of record. The applicant's appeal was received October 27, 2006, thirty-five (35) days after the notice of decision was issued. Therefore, the appeal was untimely filed, and must be rejected.

ORDER: The appeal is rejected.