



U.S. Citizenship  
and Immigration  
Services

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FILE: [Redacted]  
MSC 04-360-10163

Office: NEW YORK

Date: **AUG 19 2008**

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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application for Temporary Resident Status 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), was denied by the District Director, New York. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The applicant submitted a Form I-687, Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (Act), and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet. The director determined that the applicant had not established by a preponderance of the evidence that he had continuously resided in the United States in an unlawful status for the duration of the requisite period. The director denied the application, finding that the applicant had not met his burden of proof and was, therefore, not eligible to adjust to Temporary Resident Status pursuant to the terms of the CSS/Newman Settlement Agreements.

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). 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).

Every application, petition, appeal, motion, request, or other document submitted on the form prescribed by this chapter shall be executed and filed in accordance with the instructions on the form, such instructions (including where an application or petition should be filed) being hereby incorporated into the particular section of the regulations in this chapter requiring its submission. 8 C.F.R. § 103.2(a)(1). The regulation goes on to state that the form must be filed with the appropriate filing fee.

The Form I-694 includes the following instruction:

Any form I-694 that is not signed or accompanied by the correct fee will be rejected with a notice that the form I-694 is deficient. [An applicant] may correct the deficiency and resubmit the form I-694.<sup>1</sup>

The director issued her decision on May 15, 2006 and mailed it to the applicant and to counsel at their addresses of record. The applicant's appeal was first received on June 19, 2006. Because the applicant submitted his Form I-694 without the proper fee, it was returned to him with a rejection notice on June 22, 2006. The appeal, with the proper form of payment, was then received by CIS on July 4, 2006, 50 days after the director issued her decision. Therefore, the appeal was untimely filed, and must be rejected.

**ORDER:** The appeal is rejected.

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<sup>1</sup> Note, however, that a rejected application or petition will not retain a filing date. 8 C.F.R. § 103.2(a)(7).