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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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[REDACTED]

FILE:

[REDACTED]
MSC 05 020 16258

Office: NEWARK

Date:

JUL 23 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, Newark, New Jersey. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed..

The director denied the application because the applicant failed to provide evidence that he had resided unlawfully in the United States for the requisite period.

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 thirty (30) days after service of the notice of denial. 8 C.F.R. § 245a.2(p). If the decision, or notice of denial, was mailed, the applicant is afforded an additional three (3) days, and the appeal must be filed within thirty-three (33) days. 8 C.F.R. § 103.5a(b). The date of filing is not the date of mailing, but the date of actual receipt. 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).

In this case, the director issued the notice of denial on May 4, 2006 and mailed it to the applicant's address of record. The record indicates that the Form I-694 (Notice of Appeal of Decision under Section 210 or 245A) and accompanying documentation were first submitted to Citizenship and Immigration Services (CIS) on June 7, 2006, or 34 days after the decision, and after the 33 days for filing an appeal had expired. The record also reflects that on June 8, 2006 CIS rejected the Form I-694 and its supporting documentation because "the check amount [was] incorrect or [had] not been provided." The applicant next submitted the Form I-694 and supporting documentation - this time with the correct filing fee - on August 18, 2006. Because the appeal was already untimely filed as of June 7, 2006 and remained in that rejectable status, the submission of the correct fee did not remedy the fact that the appeal was late on the first attempted filing and even later still when filed with the correct fee on August 18, 2006. Therefore, the appeal was untimely filed and must be rejected.

ORDER: The appeal is rejected.