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U.S. Citizenship
and Immigration
Services

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[Redacted]

LI

FILE:

[Redacted]

Office: CALIFORNIA SERVICE CENTER

Date: **AUG 29 2007**

XDW 93 036 0439

IN RE:

Applicant:

[Redacted]

APPLICATION:

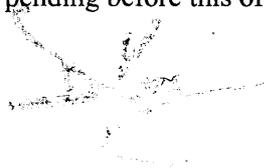
Application for Adjustment from Temporary to Permanent Resident Status under Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:

[Redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have 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 Director, California Service Center denied the application for adjustment to permanent resident status in the legalization program because it was untimely filed. The matter is now before the Administrative Appeals Office (AAO). The appeal will be rejected. The AAO will return the matter for further action by the director.

The director denied the application based on the determination that the applicant failed to appear for at least two scheduled interviews with a service officer and thus failed to complete the application process.

An adverse decision on an application for 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).

Despite counsel's assertion that the applicant notified Citizenship and Immigration Services of her change of address, the record lacks documentation to support this claim. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Therefore, while the notice of denial and prior interview notices were not sent to the applicant's latest address, they were sent to the applicant's latest address of record. There is no indication that the applicant updated that address when she moved to Missouri.

The director issued the notice of denial on June 16, 2006. The appeal was received on June 14, 2007. It is noted, however, that the director did not mail the Notice of Denial to the applicant's address of record. Thus, the untimely filing of the appeal appears to be due to the director's error. Pursuant to 8 C.F.R. § 245a.2(q), the director may *sua sponte* reopen any adverse decision. Accordingly, the director is hereby instructed to resend the prior notice of denial to the applicant's correct address of record. A copy shall also be sent to the applicant's attorney of record. Additionally, the director may certify any such decision to the AAO. *See* 8 C.F.R. § 245a.3(l).

ORDER: The appeal is rejected as untimely filed.