



U.S. Citizenship
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Services

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FILE: [REDACTED]
MSC-05-200-11313

Office: CLEVELAND

Date: DEC 20 2007

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:

SELF-REPRESENTED

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.


Ba 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, Cleveland, Ohio. 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. Specifically, the director stated that though the applicant testified under oath that he first entered the United States in 1980, he submitted no evidence to prove that he entered the United States before January 1, 1982. It is noted here that the regulation at 8 C.F.R. § 245a.2(b)(1) states that to be eligible to adjust status to that of a Temporary Resident, applicants must establish that they entered the United States prior to January 1, 1982 and then continuously resided since that time and for the duration of the requisite period. The regulation at 8 C.F.R. § 245a.2(d)(6) specifies that applicants must provide evidence of eligibility apart from their own testimony. Here, the applicant did not provide evidence of his eligibility other than his own testimony. 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 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. 8 C.F.R. § 245a.2(p). Pursuant to the regulation at 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 regulations further provide that every application, petition, appeal, motion, request, or other document submitted on the form prescribed by the Department of Homeland Security regulations shall be executed and filed in accordance with the instructions on the form; and the instructions are incorporated into the particular section of the regulations requiring its submission. 8 C.F.R. § 103.2(a)(1). The instructions for filing the Form I-694 specify that the form is to be mailed to the address on the Notice of Denial. In this case, the director specified that the applicant should mail his Form I-694 to a P.O. Box in Chicago if he was to submit it through the United States Postal Service.

The director issued his decision on May 10, 2006, and mailed it to the applicant's address of record. Though the applicant sent his Form I-694 through the United States Postal Service, he failed to mail it to the address his Notice of Denial specified he should send it to. Rather, he submitted it to Cincinnati, Ohio delaying its arrival to Chicago. The record shows that the applicant's Form I-694 was received in Chicago on July 10, 2006, sixty-one (61) days after the director issued his decision. As the appeal was filed at the improper location and was therefore untimely received, it must be rejected.

ORDER: The appeal is rejected.