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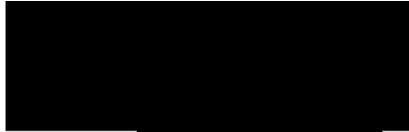
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:

MSC-06-098-27225

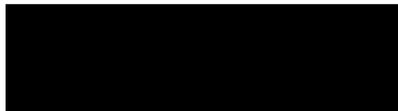
Office: NEW YORK

Date:

OCT 05 2007

IN RE:

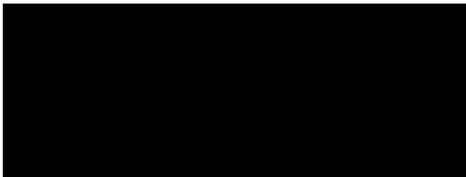
Applicant:



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 New York District Office and that decision is now before the Administrative Appeals Office on appeal. The appeal will be rejected.

The director denied the application because she 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. It is noted here that applicants for Temporary Resident Status bear the burden of proving by a preponderance of the evidence that they have resided in the United States for the requisite period. 8 C.F.R. § 245a.2(d)(5). To meet their burden of proof, applicants must provide evidence of eligibility apart from their own testimony. 8 C.F.R. § 245a.2(d)(6). The regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of documentation that an applicant may submit to establish proof of continuous residence in the United States during the requisite period. Here, the director of the National Benefits Center noted in his Notice of Intent to Deny (NOID) that the applicant failed to submit evidence apart from his own testimony to prove the following: that he had maintained continuous residence in the United States during the requisite period; that he was continuously physically present in the United States from November 6, 1986 and then for the duration of the requisite period; and that he was admissible as an immigrant. The director granted the applicant thirty (30) days within which to submit additional evidence in support of his application. The director of the New York District Office noted in her Notice of Decision that though the Service received additional evidence from the applicant in support of his application, this evidence was insufficient to overcome the reasons for denial as stated in the NOID. Therefore, the director found he was ineligible to adjust status to that of a Temporary Resident and denied the application.

It is noted here that the record contains evidence that the applicant was arrested on April 7, 2001 for a violation of [REDACTED] but that the New York District Attorney's Office declined to prosecute the applicant for that offense. Violations of the New York State Penal Code [REDACTED] are those in which the offender is found to have criminal possession of stolen property in the fifth degree, a misdemeanor offense. However, the record shows that the applicant was not prosecuted for this offense.

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 June 29, 2006, and mailed it to both the applicant's and his attorney's addresses of record. The applicant's appeal was first received Tuesday, August 1, 2006, thirty-three (33) days after the Notice of Decision was issued. However, it was rejected at that time. The rejection notice in the record indicates his Form I-694 was rejected because the applicant failed to submit his Form I-694 with the proper filing fee. The instructions for filing the form I-694 clearly indicate that all fees must be submitted in the exact amount. The instructions go on to provide a website address and the telephone number of the National Customer Service Center which applicant's can contact to determine the correct filing fee for the application they are filing. The instructions further state that 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. Applicants may correct the deficiency and resubmit the Form I-694. However, an application or petition is not considered properly filed until accepted by USCIS. The applicant resubmitted his Form I-694 with the correct fee to the Service on August 14, 2006, forty-six (46) days after the director issued her decision. Therefore, as the applicant's appeal was untimely filed, it must be rejected.

ORDER: The appeal is rejected.