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U.S. Citizenship  
and Immigration  
Services

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FILE:

MSC-05-190-11092

Office: NEW YORK Date:

OCT 18 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. Specifically, the director noted in her Notice of Intent to Deny (NOID) that at the time of the applicant's interview on December 12, 2005, he stated that he first entered the United States in December of 1982. The director went on to note that he also stated that he returned to Senegal at the end of 1983, worked in [REDACTED] and had a child born in Senegal in 1986. It is noted here that applicants for adjustment of status to Temporary Residents must establish they entered the United States before January 1, 1982, and then maintained continuous residence in the United States in an unlawful status since such date and through the date they attempted to file their application during the original filing period, which was from May 5, 1987 to May 4, 1988. Section 245A(a)(2) of the Immigration and Nationality Act (Act), 8 U.S.C. § 1255a(a)(2). An applicant shall be regarded as having resided continuously in the United States if at the time of filing an application for Temporary Resident Status, no single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, through the date the application is filed, unless the alien can establish that due to emergent reasons the return to the United States could not be accomplished within the time period allowed, the alien was maintaining residence in the United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.1(c). The director determined that based on the applicant's testimony, he was ineligible to adjust status to that of a Temporary Resident as he did not reside continuously in the United States for the duration of the requisite period. The director granted the applicant thirty (30) days within which to submit additional evidence in support of his application. It is noted that the director sent her NOID to the applicant's address of residence but misspelled Hempstead, the name of the applicant's town. It is further noted that the record shows that the NOID was returned to the director's office as undeliverable. In denying the application, the director stated that as the applicant failed to submit additional evidence for consideration in making a decision in his case he did not overcome her reasons for denial as stated in her NOID.

On appeal, the applicant's attorney asserts that the applicant never received the director's NOID. However, he states that he did receive her decision. It is noted here that the decision was mailed to the applicant's address of record, which is the same address that her NOID was mailed to. There was no attorney of record copied on either notice.

An adverse decision regarding Temporary Resident Status may be appealed to the Administrative Appeals Office (AAO). 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 January 28, 2006, and mailed it to the applicant's address of record. The applicant's appeal was first received timely on February 28, 2006, thirty-one (31) days after the director issued her decision. However, the record indicates that the applicant's appeal was rejected by the Service multiple times after its first submission. A Form I-797 Notice of Action indicates that the application was returned to the applicant on March 15, 2006 because it was incorrectly filed with the Vermont Service Center. A letter from the applicant's attorney of record indicates that the applicant's Form I-694 was subsequently rejected because it was filed with the incorrect filing fee. It is not clear from the record when this occurred. On May 10, 2006 correspondence from the applicant's attorney indicates that the application was again rejected because the applicant failed to indicate the receipt number of the decision that the appeal was in reference to. While the AAO notes that applicants are not required to show their receipt numbers on their Forms I-694 and therefore the rejection of the applicant's Form I-694 on that basis was in error, the instructions for Filing the Form I-694 clearly state that the form must be mailed to the address given on the "Notice of Denial, " in this case to an address in Chicago rather than to the Vermont Service Center. As his Form I-694 was received by the Vermont Service Center and rejected by them on March 15, 2006, he could not have properly filed his Form I-694 before March 15, 2006, forty-six (46) days after the director issued her decision. Therefore, the applicant's appeal was untimely filed and must be rejected.

**ORDER:** The appeal is rejected.