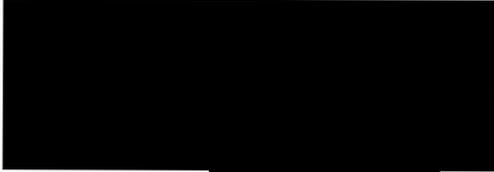




U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY



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FILE:



Office: NEW YORK Date:

JAN 02 2008

MSC-05-130-10703

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:

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.

n /

RPW
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, New York. The decision is now before the Administrative Appeals Office (AAO) 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 she found that the affidavits the applicant submitted in support of his application were not credible. She granted the applicant thirty (30) days within which to submit additional evidence in support of his application. As the applicant did not submit additional evidence in response to the director's NOID, he failed to overcome her reasons for denial. Therefore, the director found the applicant was ineligible to adjust status to that of a Temporary Resident and denied the application.

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 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). Form I-694 includes the following instruction:

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. [An applicant] may correct the deficiency and resubmit the Form I-694.¹

¹ Note, however, that a rejected application or petition will not retain a filing date. 8 C.F.R. § 103.2(a)(7). As Form I-694 must be filed within 30 days of the notice of decision, it would not be possible to timely resubmit the Form I-694 in this case.

The director issued her decision on April 17, 2006, and mailed it to the applicant's address of record. It is noted that the director's decision indicates that if the applicant would like to submit an appeal to Citizenship and Immigration Services (CIS) he should submit a Form I-694 to a specific CIS address in Chicago, Illinois. The record shows the applicant's appeal was initially received without the proper fee by the CIS district office in New York, New York. CIS sent the applicant a notice on May 30, 2006, forty-three (43) days after the director issued her decision, informing the applicant that he had submitted his form without the proper fee. It is unclear when CIS received the applicant's properly filed Form I-694. However, as the applicant submitted his Form I-694 without the correct fee, his first submission of this form was not properly filed. Therefore, the applicant's appeal was rejected for legitimate reasons. The record shows that at the time CIS informed the applicant that he had filed his Form I-694 without the proper fee, it was untimely. As the appeal was untimely filed, it must be rejected.

ORDER: The appeal is rejected.