

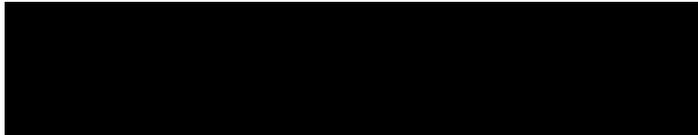
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**U.S. Citizenship  
and Immigration  
Services**

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FILE: [REDACTED]  
XMA-88-158-02021

Office: WILLISTON, VT

Date: **JAN 02, 2008**

IN RE: Applicant: [REDACTED]

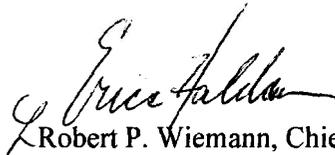


APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

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.

  
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application for status as a Temporary Resident under section 245A of the Immigration and Nationality Act (Act) with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS) or the Service, was denied by the Director of the Williston, Vermont Regional Processing Facility and that decision is now before the Administrative Appeals Office on appeal. The case will be remanded for further action.

The director denied the application because he determined that the applicant did not establish, by a preponderance of the evidence, that he maintained continuous residence in the United States from a date prior to January 1, 1982 until the date he filed his Form I-687. In this case, Immigration and Naturalization Service (INS), now known as Citizenship and Immigration Services (CIS) or the Service received this applicant's Form I-687 on April 30, 1988. Here, the record shows that when the applicant was interviewed by an Immigration Officer in New York in 1988, he indicated that during the requisite period he was only absent from the United States on only one occasion since he first entered. He stated that he went back to his country of citizenship, which was still part of a unified Yugoslavia at that time, on November 1986 to renew his passport. He indicated that he returned that same month. However, in denying the applicant, the director noted that United States Government records indicate that the applicant received a United States Non-immigrant Visa issued in Belgrade, in what was then Yugoslavia on October 2, 1986. Service records further indicate that the applicant did not enter the United States with that visa until May 20, 1987. This indicates that the applicant was not present in the United States for at least two-hundred thirty (230) days during the requisite period.

It is noted here that the regulation at 8 C.F.R. § 245a.2(d)(5) specifies that applicants for Temporary Resident Status bear the burden of establishing that they resided continuously in the United States for the duration of the requisite period. The regulation at 8 C.F.R. § 245a.2(h)(1)(i) goes on to say that applicants shall be regarded as having maintained continuous residence in the United States if 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 for Temporary Resident Status is filed unless the applicant can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed. Here, because the record indicates that the applicant was absent for more than forty-five (45) days during the requisite period, the applicant has not met his burden of proving by a preponderance of the evidence that he resided continuously in the United States for the duration of that time. There is nothing in the record to suggest that the applicant's return was delayed due to emergent circumstances. Therefore, the director found he was ineligible to adjust status to that of a Temporary Resident and denied the application.

The record shows that on April 25, 1988, when the applicant submitted his Form I-687 his address of record was [REDACTED], Brooklyn, New York. However, the record indicates that the Service received multiple Forms I-697, Change of Address Form for Legalization and Special Agricultural Workers (SAW), from this applicant subsequent to his filing his Form I-687, two of which were received before the director issued his decision. The first such Form I-697 informed the Service that the applicant had moved to [REDACTED] in New York. This was received by the Service on July 31, 1989. The second Form I-697 shows that the applicant informed the Service that he had moved to [REDACTED] in Forest Hills, New York. A date stamp shown on this Form I-697 indicates it was received by the Service for processing on November 16, 1989. Despite receiving these Forms I-697 from the applicant, the record indicates that the director mailed his notice of decision dated December 28, 1989 to the applicant at the

address at which he resided when he submitted his Form I-687, rather than to his current address of record at that time. The regulations at 8 C.F.R. § 103.5a and 8 C.F.R. § 336.1(c) state that service of a notice of denial may be made in person or by certified mail to the applicant's last known address, or upon the attorney or representative of record. Here, the Service failed to comply with these regulations, as the applicant's notice of denial was not sent to the applicant's last known address. Therefore, the applicant was not properly served the director's notice of decision.

Because the applicant was not properly served his notice of denial, he was not informed of the reasons for the denial, nor was he afforded the opportunity to submit a notice of appeal within thirty (30) days of receiving that notice. Therefore, the case will be remanded for the purpose of reissuing and properly serving the director's notice of decision to the applicant at his current address of record. This reissued notice of decision shall inform the applicant of his right to appeal the decision and shall afford the applicant thirty (30) days within which to do so.

**ORDER:** This matter is remanded for further action pursuant to the above discussion.