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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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[REDACTED]

FILE: [REDACTED]  
MSC-05-246-11563

Office: NEW YORK

Date: JAN 04 2008

IN RE: Applicant: [REDACTED]

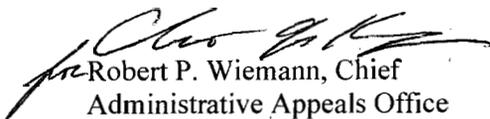
APPLICATION: Application for Status as a Temporary Resident pursuant to Section  
245A of the Immigration and Nationality Act, as amended, 8 U.S.C. §  
1255a

ON BEHALF OF APPLICANT:

[REDACTED]

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.

  
for 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 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. In her Notice of Intent to Deny (NOID), the director noted that though the applicant submitted affidavits as evidence in support of his claim of having maintained continuous residence in the United States for the duration of the requisite period, it did not appear that the affiants from whom they were submitted had direct personal knowledge of the events and circumstances of the applicant's residency. The director went on to say that the applicant did not submit proof that the affiants were present in the United States during the statutory period. The director 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, 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. 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).

Every application must be filed with the appropriate filing fee. 8 C.F.R. § 103.2(a)(1). An application submitted with the wrong filing fee shall be rejected. 8 C.F.R. § 103.2(a)(7)(i). Rejected applications do not retain a filing date. *Id.* 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.<sup>1</sup>

The director issued her decision on June 13, 2006, and mailed it to the applicant and to counsel at their respective addresses of record. The applicant's appeal was first submitted on July 7, 2006, twenty-four (24) days after the notice of decision was issued. However, the record shows that the applicant's Form I-694 Notice of Appeal of Decision was rejected by the Service at that time because it had not been filed with the correct fee and was, therefore, not properly filed. The service received the applicant's properly filed, resubmitted Form I-694 filed with the correct fee on Friday July 21, 2006, thirty-eight (38) days after the director issued her decision. As the appeal was untimely filed, it must be rejected.

**ORDER:** The appeal is rejected.

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<sup>1</sup> 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.