

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

41



FILE: [REDACTED] Office: NATIONAL BENEFITS CENTER Date: **MAR 19 2008**
MSC-04-280-12671

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Temporary Resident Status under 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. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. 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. If your appeal was sustained or remanded for further action, you will be contacted.

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, National Benefits Center. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed.

The director denied the application because the applicant failed to provide evidence that she had continuously resided in an unlawful status in the United States throughout the requisite period.

An adverse decision on an application for temporary resident status may be appealed to the AAO; the appeal with the required fee must be filed within thirty (30) days after service of the notice of denial. 8 C.F.R. § 245a.2(p). If the decision, or notice of denial, was mailed, the applicant is afforded an additional three (3) days, and the appeal must be filed within thirty-three (33) days. 8 C.F.R. § 103.5a(b). The date of filing is not the date of mailing, but the date of actual receipt. 8 C.F.R. § 103.2(a)(7)(i). An appeal that is not timely filed will not be accepted. 8 C.F.R. § 245a.2(p).

The record of proceedings shows that the director issued the notice of denial on May 3, 2006, and mailed it to the applicant's address of record. In the Notice of Decision the director specifically noted that the applicant could appeal the decision by completing the enclosed Notice of Appeal of Decision Under Section 210 or 245A of the Immigration and Nationality Act (Form I-694). The director also specified the two addresses where the Notice of Appeal was to be sent to. The record shows that the applicant initially sent her appeal on the wrong form (Form EOIR-29), and to the wrong Citizenship and Immigration Services (CIS) office. This Notice of Appeal was rejected and returned to the applicant on June 1, 2006. The record further shows that the applicant sent her appeal on Form I-694, as originally instructed by the director, on June 10, 2006. The applicant states in her appeal that she received the original denial notice and sought legal assistance in filing her appeal. She further states that the attorney misinformed her resulting in her sending the wrong form to the wrong address.

In the instant case, the applicant admits to receiving the director's denial notice. It is noted that the record of proceeding shows that the director specifically indicated in her Notice of Denial what the applicant was to do in filing her appeal, and even enclosed the Form I-694 for her convenience. There is no evidence in the record to substantiate the applicant's claim that she was misguided by an attorney. Here, the facts indicate that the applicant's Form I-687 application was denied by the director on May 3, 2006. Her appeal was received on June 10, 2006, 38 days later.¹ Therefore, the appeal was untimely filed and must be rejected.

ORDER: The appeal is rejected.

¹ The June 10, 2006 rejection notice is withdrawn due to the prior availability of the information requested.