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U.S. Citizenship
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FILE: [REDACTED]
MSC-05-365-11072

Office: PHOENIX

Date: **NOV 16 2009**

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:

SELF-REPRESENTED

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.

Perry Rhew
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 Director, Phoenix. 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 he had resided unlawfully in the United States for 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). 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).

In this case, the director issued the notice of denial on April 13, 2007, and mailed it to the applicant's address of record.¹ The appeal was initially received on May 18, 2007, 35 days later. Therefore, the appeal was untimely filed and must be rejected.

ORDER: The appeal is rejected.

¹ All legalization cases filed with United States Citizenship and Immigration Services (USCIS) which turn on the question of whether an applicant's unlawful status was known to the government throughout the statutory period and related issues were held for an extended period until the final terms of various legalization class-action lawsuits which relate to these issues were handed down, the final such class-action lawsuit being: *Northwest Immigrant Rights Project, et al. vs. U.S. Citizenship and Immigration Services, et al.*, 88-CV-00379 JLR (W.D. Was.) (NWIRP). It is the facts of this case that forced USCIS to place it and others like it on hold, rather than some request on the applicant's part that the case be held pending the outcome of these class-action lawsuits/settlement agreements. The terms of the NWIRP Settlement Agreement were handed down during September 2008. After that, this office began adjudicating these appeals in the order received. As a consequence, this appeal was not completed within the processing time that legalization appeals are normally completed.