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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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FILE: [REDACTED]
MSC-06-073-12388

Office: CHICAGO

Date: **DCT 23 2009**

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:



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. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed or rejected, 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.

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, Chicago. The applicant filed a motion to reopen, which the director denied. The decision denying the motion, is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The director denied the application, finding that the applicant had failed to meet her burden of proving by a preponderance of the evidence that she resided continuously and was physically present in the United States during and throughout the requisite periods.

As stated in 8 C.F.R. § 245a.2(p), 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 30 days after service of the notice of denial. Three days are added if the notice of denial is served by mail. 8 C.F.R. § 103.5a(b). The date of filing is not the date of mailing, but the date of actual receipt. See 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 proceeding, the director issued the notice of denial (NOD) on March 27, 2007 and mailed it to the applicant's address of record. The director gave a specific instruction to file the appeal along with the fee to the Chicago Lockbox within 30 days from the date of the NOD. The director further asserted that if the applicant did not file an appeal or if the appeal was not filed within the prescribed time period, the decision would be final. Counsel for the applicant sent a motion to reopen and reconsider to the director, Chicago, on April 17, 2007. The motion was denied on January 7, 2008. Pursuant to the regulation at 8 C.F.R. § 103.5(b), while the AAO may *sua sponte* reopen or reconsider any proceeding within its jurisdiction, motions to reopen a proceeding or reconsider a decision under part 210 or 245a shall not be considered. The applicant has no motion rights, therefore, an appeal of a decision to deny a motion is moot and must be rejected.

ORDER: The appeal is rejected.