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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



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FILE:



Office: HOUSTON

Date:

FEB 25 2010

MSC 05 165 10177

IN RE:

Applicant:



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.

IN BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office on your appeal. If your appeal was dismissed or rejected, your file has been sent to the National Benefits Center. You no longer have a case pending before this office. If your appeal was sustained or the matter was remanded for further action, your file has been returned to the office that originally decided your case, and you will be contacted. 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, Houston, Texas, and is now before the Administrative Appeals Office on appeal. The appeal will be rejected.

On June 12, 2008, U.S. Citizenship and Immigration Services (USCIS) received a brief from counsel filed on behalf of the applicant. The brief, however, was attached to a Form I-694, Notice of Appeal, which belonged to someone other than the applicant.

The director inadvertently assigned the Form I-694 to the applicant, and on July 11, 2008, issued a notice rejecting the appeal as untimely filed. Based on the rejection notice, counsel subsequently filed a Form I-694 on behalf of the applicant disputing the untimely filing. The rejection letter, however, was incorrectly sent as USCIS records do not reflect that an appeal had been filed on behalf of the applicant, only a brief dated June 10, 2008, which was attached to the Form I-694 belonging to someone else.

On January 20, 2010, a facsimile was sent to counsel's office informing him of the above issue. Counsel was provided the opportunity to either fax or mail evidence reflecting that a timely appeal had been filed on behalf of the applicant. Counsel was provided ten business days in which to submit the requested evidence. Counsel, in response, submitted a copy of Form I-797C, Notice of Action, regarding the filing of a Form I-694 filed on March 10, 2009.

An adverse decision on an application for temporary resident status may be appealed to the Administrative Appeals Office. Any appeal shall be submitted to the Service Center with the required fee 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). Whenever a person has the right or is required to do some act within a prescribed period after the service of a 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. 8 C.F.R. § 103.5a(b).

The record reflects that the director sent the Notice of Denial of May 8, 2008, to the applicant and to counsel at their addresses of record. Counsel dated the appeal March 2, 2009 and it was received by USCIS on March 11, 2009, ten months after the decision was issued. Accordingly, the appeal was untimely filed, and must be rejected.

ORDER: The appeal is rejected.