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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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[redacted]

FILE: [redacted] Office: WEST PALM BEACH Date: MAR 15 2010

MSC 05 302 11114

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. 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.

Elizabeth McCormack

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, West Palm Beach. 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 denied the application, finding that the applicant had not provided credible evidence to establish that he had entered the United States prior to January 1, 1982, and thereafter continuously resided in the United States in an unlawful status for the duration of the requisite period.

On appeal, counsel states that the evidence submitted should be deemed credible and sufficient to verify and authenticate his claim. Counsel requested a copy of the record of proceedings under the Freedom of Information Act (FOIA). The record reflects that the FOIA request was processed on September 25, 2009. (NRC2009016644). On the Form I-694, counsel indicated that a written brief would be submitted within 30 days of receipt of the record of proceedings. To date, this office has no record that any further evidence or brief was received with regard to this appeal. Accordingly, a decision will be rendered based on the evidence of record.

An adverse decision on an application for temporary resident status may be appealed to the AAO. Any appeal with the required fee shall be filed with the Service Center or district office issuing such decision within thirty (30) days after service of the notice of decision in accordance with the procedures of 8 C.F.R. § 103.3(a). An appeal received after the 30-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 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 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).

The director issued the notice of decision on January 23, 2007, and mailed a copy of the notice to the applicant at his address of record. The Form I-694, Notice of Appeal, was filed on March 13, 2007 [1] 49 days after the notice of decision had been issued. Therefore, the appeal was untimely filed and must be rejected.

ORDER: The appeal is rejected.

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[1] The record contains Form G-714, Receipt for Funds and Valuables Transferred from Mailroom, which indicates the fee of $110 for the applicant's Form I-694 was collected on March 13, 2007.