

MATTER OF TEKLAY

In Deportation Proceedings

A-15175020

Decided by Board May 22, 1987

Orders of the Board of Immigration Appeals which provided that applications for legalization would have to be "filed within 30 days of the date designated by the Attorney General for the initial acceptance of applications" are clarified to provide that the 30-day filing period is only required as specifically mandated by the Immigration and Naturalization Service's final rules.

CHARGE:

Order: Act of 1952—Sec. 241(a)(2) [8 U.S.C. § 1251(a)(2)]—Nonimmigrant—remained longer than permitted

ON BEHALF OF RESPONDENT:

James J. Orlow, Esquire
Orlow, Fuller, Rubin & Steel
936 Public Ledger Building
6th and Chestnut Street
Philadelphia, Pennsylvania 19106

ON BEHALF OF SERVICE:

Richard J. Sharkey
District Counsel

BY: Milhollan, Chairman; Dunne, Morris, Vacca, and Heilman, Board Members

On March 27, 1987, pursuant to a stipulation of the parties, the proceedings on appeal in this case were ordered continued indefinitely without further action by the Board of Immigration Appeals pending the respondent's opportunity to apply and be considered for legalization under the provisions of section 201 of the Immigration Reform and Control Act of 1986, Pub. L. No. 99-603, 100 Stat. 3359, 3394. The March 27, 1987, order will be further considered and clarified on our own motion.

The March 27, 1987, order preceded the issuance by the Immigration and Naturalization Service of the final rules governing applications for legalization. The order provided that any application would have to be "submitted pursuant to the regulations to be published regarding applications for legalization." It was also stated that the application would have to be "filed within 30 days of the

Interim Decision #3027

date designated by the Attorney General for the initial acceptance of applications." This latter provision was intended to be cautionary *i.e.*, to guard against the possibility that a 30-day filing requirement would be imposed and the alien not become aware of this significant time restriction.

The Service has now promulgated the final rules regarding applications for legalization. *See* 52 Fed. Reg. 16, 205-216 (1987) (to be codified at 8 C.F.R. § 245a). The regulations do not require aliens, such as the respondent, who were either apprehended by the Service before November 6, 1986, or were the subject of Orders to Show Cause issued before November 6, 1986, to file applications for legalization within 30 days of May 5, 1987, the date designated for the initial acceptance of such applications. Accordingly, our March 27, 1987, order in this case, and all other Board orders in which this 30-day filing period was referenced, are clarified to provide that the Service regulations govern applications for legalization. The application period set forth in the regulations is controlling and the filing of an application within 30 days is only required as specifically mandated by the regulations. *See* 8 C.F.R. § 245a.2 (1988).

ORDER: On reconsideration, the Board's March 27, 1987, order is reinstated as clarified herein.