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U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

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PUBLIC COPY

[redacted]

FILE: [redacted] Office: NEWARK Date: AUG 2 9 2008
MSC-04-300-10952

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.

Robert P. Wiemann, 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 District Director, Newark, and is now before the Administrative Appeals Office on appeal. The appeal will be summarily dismissed.

The applicant must establish entry into the United States before January 1, 1982, and continuous residence in the United States since such date through the date the application is considered filed pursuant to the CSS/Newman Settlement Agreements. Section 245A(a)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1255a(a)(2).

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, on July 26, 2004. On October 26, 2006, the director denied the application after determining that the applicant had not established by a preponderance of the evidence that he had continuously resided in the United States in an unlawful status for the duration of the requisite period. The director noted that the applicant failed to respond to the Notice of Intent to Deny (NOID) dated September 19, 2006, and that therefore, the application was being denied based upon the reasons stated in the NOID.

The director stated in the NOID that the applicant had testified under oath during his interview with immigration officers on September 12, 2006 that he first entered the United States in March of 1981. The director also noted that the applicant indicated during his interview with Immigration Service Agents on April 28, 1994 that he entered the United States on May 10, 1992. The director further noted that the applicant gave a sworn declaration at the JFK International Airport to Service Agents on November 11, 1994 stating that he had lived in the United States since 1989 and had stayed for two years before leaving the country. The director determined that the affidavits submitted by the applicant were lacking in detail, and that overall, the evidence contained in the record of proceeding was inconsistent and insufficient to establish the applicant's eligibility for temporary resident status.

The director denied the application, determining that the applicant was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, the applicant asserts that he did respond to the NOID. The applicant submits copies of an express mail airbill and shipment tracking record. The tracking record states that the package was "returned to shipper" on October 27, 2006 and does not establish that the applicant's response to the NOID was, delivered to CIS. The record contains no evidence of the applicant's response to the NOID, apart from what he submits for the first time on appeal. The applicant was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the I-687 application was adjudicated. The applicant failed to submit the requested evidence and now submits it on appeal. However, the AAO will not consider this

evidence for any purpose. *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director.

As stated in 8 C.F.R. § 103.3(a)(3)(iv), any appeal which is filed that fails to state the reason for appeal, or is patently frivolous, will be summarily dismissed.

A review of the director's decision reveals that the director accurately set forth a legitimate basis for denial of the application. On appeal, the applicant has not addressed the basis for denial. The appeal must therefore be summarily dismissed.

ORDER: **The appeal is dismissed. This decision constitutes a final notice of ineligibility.**