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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE:

[Redacted]

Office: NEW YORK

Date:

FEB 28 2008

MSC 04 350 10251

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:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, 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.


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, New York. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 September 14, 2004. The director determined 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.¹ The director observed that the applicant had not provided any contemporaneous evidence of residence in the United States relating to the requisite period, and had submitted only two affidavits, which were significantly lacking in detail regarding the affiants' knowledge of the events and circumstances of the applicant's residence and were not credible, probative, or amenable to verification. The director denied the application as the applicant had not met his burden of proof and was, therefore, not eligible to adjust to Temporary Resident Status pursuant to the terms of the CSS/Newman Settlement Agreements.

On appeal, the applicant states that he has been living and residing in the United States during the statutory periods, and that he submitted affidavits from acquaintances that knew him during the requisite period. He states that he believes he is eligible for temporary resident status.

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.

Upon review, the AAO concurs with the director's decision and affirms the denial of the application. A review of the decision reveals the director accurately set forth a legitimate basis for denial of the application. As noted by the director, the affidavits the applicant submitted, considered in light of the totality of the evidence in the record, were lacking in probative value. The applicant has not addressed the grounds for denial or submitted evidence to overcome the basis of the director's decision. Therefore, the appeal must be summarily dismissed.

¹ An applicant for temporary resident status must establish entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status since such date and through the date the application is filed. Section 245A(a)(2) of the Act, 8 U.S.C. § 1255a(a)(2). For purposes of establishing residence and physical presence under the CSS/Newman Settlement Agreements, the term "until the date of filing" in 8 C.F.R. § 245a.2(b)(1) means until the date the applicant attempted to file a completed Form I-687 application and fee or was caused not to timely file during the original legalization application period of May 5, 1987 to May 4, 1988. CSS Settlement Agreement paragraph 11 at page 6; Newman Settlement Agreement paragraph 11 at page 10.

Although the appeal will be summarily dismissed, it is noted that the director incorrectly applied the regulation at 8 C.F.R. § 103.2(b) in evaluating the instant application and supporting evidence. Nevertheless, the district director's error is deemed harmless as the AAO conducts a de novo review, evaluating the sufficiency of the evidence in the record according to its probative value and credibility as required by the regulation at 8 C.F.R. § 245a.(d)(6). The applicant did not submit sufficient credible, probative evidence to meet his burden of establishing continuous unlawful residence in the United States during the requisite period.

Finally, the record reflects that on September 13, 1995, the applicant was arrested in Miami-Dade County, Florida and charged with prostitution. On January 31, 1997, the applicant was convicted of this misdemeanor offense in the Circuit and County Court of the Eleventh Circuit of Florida in and for Miami-Dade County (Case number 95043671). This single misdemeanor conviction does not render the applicant ineligible pursuant to 8 C.F.R. § 245a.2(c)(1).

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