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U.S. Citizenship
and Immigration
Services

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FILE:

MSC-05-280-11926

Office: MIAMI

Date:

JUL 21 2008

IN RE:

Applicant:

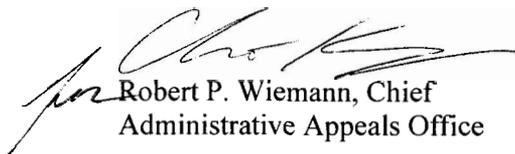
APPLICATION:

Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:

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

The director denied the application because she found the evidence submitted with the application was insufficient to establish eligibility for Temporary Resident Status pursuant to the terms of the CSS/Newman Settlement Agreements. Specifically, in her Notice of Intent to Deny (NOID), issued November 1, 2006, the director stated that the applicant was not consistent when he represented his manner of entry into the United States after absences that occurred during the requisite period. She further stated that he failed to submit credible evidence that allowed him to prove that he resided continuously in the United States for the duration of the requisite period by a preponderance of the evidence. Therefore, the director found that the applicant did not meet his burden of proof. The director granted the applicant 30 days within which to submit additional evidence in support of his application. The director mailed her NOID to both the applicant and to his attorney at their respective addresses of record. In denying the application, the director noted that her office did not receive additional evidence from the applicant in response to her NOID.

On appeal, the applicant states that the director never sent him her NOID. He noted that the receipt number on the decision letter he received from the director did not correspond with his receipt number. He states that he has been residing at his address for 11 years and has never had difficulty receiving mail.

While the AAO notes that the director did not accurately indicate this applicant's receipt number on her decision, after a review of the record, the AAO finds that the inconsistencies noted by the director in her NOID are consistent with those found in the record by the AAO.

Regarding the applicant's assertion that the director never sent him a NOID prior to issuing a final decision, the record shows that the director's NOID was mailed on November 1, 2006 and that it was sent to both the applicant and to his attorney of record at that time.

Further, paragraph 7, page 4 of the CSS Settlement Agreement and paragraph 7, page 7 of the Newman Settlement Agreement both state in pertinent part:

Before denying an application for class membership, the Defendants shall forward the applicant or his or her representative a notice of intended denial explaining the perceived deficiency in the applicant's Class Member Application and providing the applicant thirty (30) days to submit additional written evidence or information to remedy the perceived deficiency.

However, the director did not deny this application based on class membership. Therefore, the director was not required to issue a NOID prior to issuing her final decision.

The applicant did not state that the director erred in her adjudication of the merits of his Form I-687 application or present additional evidence for consideration with his appeal.

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 decision reveals the director accurately set forth a legitimate basis for denial of the application. On appeal, the applicant has not presented additional evidence. Nor has he addressed the grounds stated for denial. The appeal must therefore be summarily dismissed.

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