

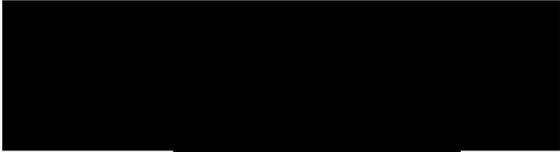
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U.S. Department of Homeland Security
20 Mass. Ave. N.W., Rm. 3000
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U.S. Citizenship
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JUN 12

FILE: [REDACTED]
MSC 06 028 13500

OFFICE: NATIONAL BENEFITS CENTER

Date:

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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the National Benefits Center. If your appeal was sustained, or if the matter 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 Director, National Benefits Center, and 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. 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. The director specifically addressed the statement submitted by the applicant in response to the notice of intent to deny (NOID), which was issued on December 6, 2005, and established that the applicant's statements fail to overcome his failure to submit evidence to support his claim that he resided in the United States from January 1, 1982 through the end of the statutory period. The director denied the application, finding that 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, counsel for the applicant claims that the applicant was unaware of the director's issuance of a NOID, as he had retained the services of an individual who posed as an attorney. Counsel also claimed that the applicant was unaware that a statement had been submitted in response to the director's NOID and did not know the contents of such statement.

With regard to counsel's argument, any appeal or motion based upon a claim of ineffective assistance of counsel requires: (1) that the claim be supported by an affidavit of the allegedly aggrieved respondent setting forth in detail the agreement that was entered into with counsel with respect to the actions to be taken and what representations counsel did or did not make to the respondent in this regard, (2) that counsel whose integrity or competence is being impugned be informed of the allegations leveled against him and be given an opportunity to respond, and (3) that the appeal or motion reflect whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of counsel's ethical or legal responsibilities, and if not, why not. *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988). In the present matter, the applicant has not satisfied any of the above components. In fact, aside from the Form G-28, Notice of Entry of Appearance as Attorney or Representative, which present counsel has submitted, the record does not contain any other Form G-28 showing that the applicant had been previously represented by someone else.

Additionally, there is no remedy available for an applicant who assumes the risk of authorizing an unlicensed attorney or unaccredited representative to undertake representations on his behalf. *See* 8 C.F.R. § 292.1. The AAO only considers complaints based upon ineffective assistance against accredited representatives. *Cf. id.* (requiring an appellant to meet certain criteria when filing an appeal based on ineffective assistance of counsel). As previously noted, there is no evidence either that the applicant was previously represented by an accredited attorney or representative or that the applicant had officially commenced proceedings to file a complaint against such person.

Counsel also states that he has issued a Freedom of Information Act (FOIA) request for a copy of the applicant's record. The record shows that counsel's request has been honored and that a copy of the applicant's file was sent out on April 17, 2008.¹ To date, however, more than 45 days since FOIA complied with counsel's request, no further documentation has been submitted and no statements have been made thus far addressing the grounds for the director's denial, which was issued on September 19, 2006.

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, neither counsel nor the applicant has presented additional evidence. Nor has either party addressed the grounds stated for denial.

Additionally, a review of the applicant's record of proceedings shows that the applicant provided no information regarding any employment or residence in the United States prior to 1999. The applicant has also failed to provide any documentation to establish that he has continuously resided in the United States for the entire statutory period as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E-M-*, 20 I&N Dec. 77.

Regardless, as stated above, counsel has failed to properly address the director's grounds for denial. The appeal must therefore be summarily dismissed.

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

¹ The control number for the request is [REDACTED].