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

PUBLIC COPY

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FILE:

MSC-05-285-13043

Office: BOSTON

Date:

JUN 30 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:

SELF-REPRESENTED

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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

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 12, 2005 (together, the I-687 Application). The director determined that the applicant had not established by a preponderance of the evidence that she had continuously resided in the United States in an unlawful status for the duration of the requisite period. The director denied the application as the applicant had not met her burden of proof and was, therefore, not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

The record reflects that the applicant was scheduled for an interview on October 24, 2005 and timely requested a rescheduled appointment. The applicant was rescheduled for interview on January 4, 2006¹ and failed to appear. On January 6, 2006, the director denied the application due to abandonment and erroneously stated that the applicant had appeal rights. However, the director's misstatement does not affect the regulatory requirement that a denial due to abandonment may not be appealed.

Counsel filed an appeal on March 7, 2006.² As stated in 8 C.F.R. § 103.2(b)(15), a denial due to abandonment may not be appealed. Since the denial in this case was based on the abandonment of the application, it may not be appealed.³ Therefore, the appeal will be rejected.

ORDER: The appeal is rejected.

¹ The director erroneously stated that the interview was scheduled for January 4, 2005. This is a typographical error and did not affect the applicant's responsibility to appear for the interview or to request that it be rescheduled.

² Public records indicate that counsel is not in good standing with the State of Massachusetts and has been administratively suspended from practice. See, <http://massbbo.org/bbolookup.php>. All representations will be considered; however, counsel will not receive notice of these proceedings.

³ Subsequent to the appeal the director scheduled the applicant for an interview on July 19, 2006. The applicant's attorney timely requested that the interview be rescheduled. The director rescheduled the interview for September 21, 2006, and CIS records indicate that the applicant again failed to appear and abandoned her application under 8 C.F.R. § 103.2(13).