

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

L1



FILE:

MSC-05-257-12129

Office: NEW YORK

Date:

MAY 06 2008

IN RE:

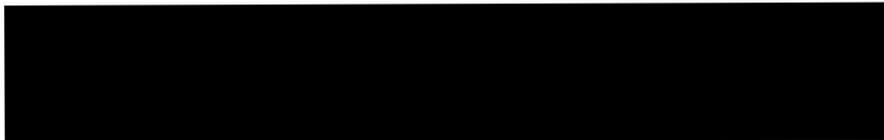
Applicant:



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, New York. 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) the director stated that the applicant failed to provide credible evidence in support of his claim of having resided continuously in the United States for the duration of the requisite period. The AAO further notes that on the applicant's Form I-687, he indicated that he was absent from the United States from December 1986 until March 1987. This indicates that at the very least, the applicant was absent from December 31, 1986 until March 1, 1987. The notes from his interview with a CIS officer on March 9, 2006 also state that the applicant testified that he left the United States in 1986 and was gone for two months. This indicates that the applicant has stated that he had an absence of approximately 60 days. It is noted here that the regulation at 8 C.F.R. § 245a.2(h)(1)(i) states in pertinent part that to be considered to have maintained continuous residence, no single absence from the United States during the requisite period can have exceeded 45 days. Here, the applicant's absence exceeds 45 days. It is further noted that the record does not show the applicant indicated that his return at that time was delayed due to an emergent reason that came suddenly into being. The director granted the applicant 30 days within which to submit additional evidence in support of his application. In her Notice of Decision, dated June 17, 2006, the director stated and the record shows that though she sent her NOID to the applicant's address of record by certified mail, it was returned to her as undeliverable. She further noted that the Service had not received a change of address form from the applicant. Because the applicant did not submit additional evidence for consideration in support of his application, he did not overcome the director's reasons for denial as stated in her NOID. Therefore, she denied his application.

On appeal, the applicant states that he previously submitted an affidavit in support of his application. He states that he never received the director's NOID.

It is noted here that the director was not required to issue a NOID pursuant to paragraph 7, page 4 of the CSS Settlement Agreement and paragraph 7, page 7 of the Newman Settlement Agreement. According to the settlement agreements, the director shall issue a NOID before denying an application for class membership. Here, the director adjudicated the Form I-687 application on the merits. As a result, the director is found not to have denied the application for class membership. Therefore, the director was not required to issue a NOID prior to issuing the final decision in this case.

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. Further, a review of the file shows that the applicant has consistently stated that he was absent for more than 45 days during the requisite period, causing him to fail to have maintained continuous residency during that time. On appeal, the applicant has not presented additional evidence. The director's decision clearly states that her office did not find the applicant met his burden of proving by a preponderance of the evidence that he resided in the United States for the duration of the requisite period. In his appeal, the applicant did not address 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