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U.S. Citizenship
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Services

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FILE: [REDACTED]
MSC-05-244-23758

Office: LOS ANGELES

Date: OCT 22 2008

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 on your appeal. You no longer have a case pending before this office. If your appeal was sustained or the matter was remanded for further action, your file has been returned to the office that originally decided your case, and you will be contacted. If your appeal was dismissed, your file has been sent to the National Benefits Center. You are not entitled to file a motion to reopen or reconsider your case.

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

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Los Angeles, denied the application for temporary resident status filed 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). 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 June 1, 2005 (together comprising the I-687 Application). The director determined that the applicant had not established that he had continuously resided in the United States in an unlawful status as required under section 245A of the Act. The director noted specifically that the applicant had submitted birth certificates for his children indicating that he was in Mexico for the registration of their births in 1986 and 1987, contrary to his testimony and application forms; that the applicant presented only one affidavit regarding his presence in the United States prior to January 1, 1982; that the applicant submitted receipts that were problematic; and that IRS reported that there was no evidence that tax forms submitted by the applicant for the years 1981 through 1988 were ever filed. The director denied the application on February 27, 2006, finding that the applicant was not eligible to adjust to temporary resident status pursuant to section 245A of the Act.

The applicant, through counsel, submitted a Form I-694, Notice of Appeal of Decision under Section 210 or 245A, on March 24, 2006, followed by counsel's brief dated April 14, 2006. Counsel asserts that the director's decision was erroneous for two reasons: (1) U.S. Citizenship and Immigration Services (CIS) failed to issue the applicant a Notice of Intent to Deny (NOID), in direct violation of the provisions of the CSS/Newman Settlement Agreements, thus denying the applicant due process; and (2) CIS ignored the evidence submitted by the applicant, misinterpreted his testimony and failed to provide him the opportunity to clarify any perceived deficiencies in his testimony. Although counsel's brief indicates that additional evidence is being submitted on appeal, it is clear that the four declarations attached to the appeal are simply resubmissions, some re-notarized with a new date, of declarations that had been submitted and considered previously, either in connection with the I-687 Application under review here or the applicant's I-485 Application to Register Permanent Resident or Adjust Status pursuant to section 1104 of the Life Act (I-485 LIFE Legalization Application), which was submitted on July 27, 2001.

Although a statement by the applicant is included with the appeal, as well as counsel's brief, neither document comprises new evidence. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Regarding counsel's assertion that CIS was required to issue a NOID in this case, counsel is mistaken. Counsel correctly noted that, according to the settlement agreements, the director shall issue a NOID before denying an application for failure to prove class membership. Paragraph 7, page 4 of the CSS Settlement Agreement and paragraph 7, page 7 of the Newman Settlement Agreement. Here, however,

the director did not deny the application for failure to prove class membership. Instead, CIS accepted the applicant's class membership, thus permitting the applicant to submit a late-filed application pursuant to the legalization settlement agreements. The director then adjudicated the application for temporary residence on the merits. As the director did not deny the applicant the benefit of class membership, the director was not required to issue a NOID prior to issuing the final decision in this case.

Regarding the applicant's other assertion that CIS ignored or misinterpreted the evidence submitted by the applicant, again no evidence was submitted to support this statement, and the director's description of the evidence in the record is accurate. Specifically, the record includes birth certificates for the applicant's children indicating that the applicant was in Mexico for the registration of their births in 1986 and 1987, contrary to his testimony and application forms; and IRS reported that there was no evidence that tax forms submitted by the applicant for the years 1981 through 1988 were ever filed. Contrary to the applicant's assertion that during the requisite period of residency he left the United States only once, in September 1987, the birth certificates he submitted clearly indicate otherwise. The birth certificates note that the birth of his daughter [REDACTED] was registered in Mexico on August 8, 1986 and that "both" ("ambos" in Spanish) parents were present for the registration; and that the birth of his daughter [REDACTED] was registered in Mexico on November 11, 1987 and, again, "both" parents were present. Moreover, contrary to the applicant's assertion that the tax forms he submitted are evidence of his residence in the United States from 1981 to 1988, the record includes a response from the IRS, dated September 24, 2004, stating, "We cannot provide the copy(s) of your tax return(s) for the year(s) 1981-1988. We searched our files using the information you gave us on the request and there was no record found of any tax return(s) being filed."

The record reflects that, as stated by the director, there is clear evidence that the applicant has misrepresented the number of absences and length of time he was absent from the United States during the requisite period; evidence of taxes paid during the requisite period is not credible; and there are significant deficiencies in other evidence submitted by the applicant. The applicant did not provide any new evidence on appeal, instead simply submitting his own and counsel's statements. He did not specify any factual error in the director's decision and did not provide any additional documentation in support of his claim. As noted above, the appeal is based on unfounded allegations of legal or factual error.

An appeal that fails to state the reason for appeal, or is patently frivolous, will be summarily dismissed. 8 C.F.R. § 103.3(a)(3)(iv). 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 and has not meaningfully addressed the basis for denial. The appeal must therefore be summarily dismissed.

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