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

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[Redacted]

FILE: [Redacted]
MSC-05-130-10729

Office: PHILADELPHIA

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:

[Redacted]

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 or rejected, your file has been sent to the National Benefits Center. You are not entitled to file a motion to reopen or reconsider your case.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Philadelphia, 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 director denied the application because the applicant failed to meet his burden of proving by a preponderance of the evidence that he resided in the United States for the requisite period, is admissible to the United States under the provisions of section 245A of the Act, and is otherwise eligible for adjustment of status under section 245A of the Act. The director found that the applicant had been notified of the director's intent to deny his application on July 16, 2007, with the issuance of a Notice of Intent to Deny (NOID), and was given the opportunity to provide additional evidence in support of his application, but that the information provided in response to the NOID was insufficient to overcome the grounds for denial. The NOID specifically found that there were material inconsistencies in the applicant's various accounts of his residence in the United States for the statutory period and that the affidavits submitted in support of his claims lacked credibility. The NOID referred to the applicant's Form I-687 Application for Temporary Residence, currently at issue on appeal, and two prior versions of a Form I-687, one dated October 23, 1991 and submitted to the Immigration and Naturalization Service (Service, now Citizenship and Immigration Services or CIS) in Miami in connection with his application for class membership in the LULAC (later Newman) class action lawsuit; and the other undated but signed by the applicant and apparently submitted to the Service on September 21, 1990 in Los Angeles in connection with his application for class membership in the CSS class action lawsuit.

The director, in the NOID, detailed the inconsistencies in the applicant's testimony and applications as follows:

On February 10, 2006 you appeared for a scheduled interview to give sworn testimony to determine your eligibility for temporary resident status. . . . You allege that you entered the United States without being inspected in October 1981 and remained to live and work in New York until January 1991 [the AAO notes that the applicant indicated that he moved to California in 1990 and to Delaware in 1991]. You stated that since you entered the U.S. in October 1981, you only traveled out of the U.S. once on February 20, 1988 to Bangladesh to attend the funeral of your mother, and returned on March 27, 1988. As indicated on your application and you confirmed, you filed an I-687 application in Los Angeles, California on September 21, 1990 and you state that you also filed for legalization in New York in April 1988.

You submitted copies of several affidavits from friends/acquaintances and employment letters in support of your claims . . . The affidavits submitted are insufficient, lack credibility and offer no specific or detailed information to establish eligibility for Temporary Resident Status.

[On your 1990 Form I-687] [y]ou claimed . . . as true and correct: You have been married one (1) time; [REDACTED] born June 7, 1964 in Bangladesh is your wife and living in the U.S.; you have only one (1) daughter, [REDACTED] born December 18, 1988 in Bangladesh, also living in the U.S.; you first entered the U.S. October 1981 at Miami, Florida without being inspected; resided at [REDACTED] in New York from October 1981 until February 1990 [The AAO notes that the information on the form states that he resided at that address until December 1984.]; your only absence from the U.S. was on February 20 1988 to Bangladesh for a visit until March 27, 1988; and you indicated March 27, 1988 as the last time you entered the U.S.

The director then enumerated the subsequent inconsistent information provided by the applicant: At his interview in connection with his pending I-687 Application, when asked to provide the names and dates of birth of all of his children, he did not include [REDACTED]; on his 1991 Form I-687, he claimed [REDACTED] as his wife, with a different date of birth, March 2, 1965 and living in Bangladesh; he claimed that his daughter, [REDACTED], was born on November 6, 1984 in Bangladesh; he claimed that he was admitted at New York in February 1981 with a visa; he claimed that he resided at [REDACTED] in New York from February 1981 until June 1985; he claimed that in June 1983 he traveled to Bangladesh for his mother's funeral and returned in July 1983; and he claimed that his last entry to the United States was on July 8, 1983.

The three application forms cited above were signed under oath by the applicant, yet contained significant inconsistencies. **The applicant's sworn testimony contradicted his prior claims.** In light of these contradictions in the record and the lack of credible evidence of residence, the director determined that the applicant had not met his burden of establishing by a preponderance of the evidence that he had entered and resided unlawfully in the United States for the requisite period and that he was therefore ineligible for temporary resident status pursuant to the CSS/Newman Settlement Agreements.

In his Notice of Appeal, the applicant failed to address the contradictions noted by the director. He later submitted a 39-page brief in which he again failed to address these contradictions, instead claiming that he "proffered substantial and ample documentary evidence in support of [his] claim for legalization," and that CIS erred in evaluating the evidence. The applicant did not address the reasons given by the director for denying the application, other than asserting that the affidavits he submitted were credible. He did not offer any explanation for material inconsistencies in his claims of how and where he entered the United States, where he resided during the requisite period, or when he was absent from the United States during the requisite period. He did not specify any factual error relevant to the material contradictions in the record and did not provide any additional documentation in support of his claim.

Any appeal that fails to address 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, the material inconsistencies in the applicant's claims. On appeal, the applicant has not presented additional evidence and has not 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.