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

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FILE:

MSC-05-158-10774

Office: NEW YORK

Date:

APR 23 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 "R. Wiemann", written over a circular stamp.

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. That decision is now before the Administrative Appeals Office 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 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 the applicant asserts that he has not received the director's notice of intent to deny.

In any proceeding that is initiated by Citizenship and Immigration Services (CIS), with proposed adverse effect, service of the initiating notice and of notice of any decision by a CIS officer shall be accomplished by personal service. 8 C.F.R. § 103.5a(c). Personal service includes mailing a copy by certified or registered mail, return receipt requested, addressed to a person at his last known address. 8 C.F.R. § 103.5a(a)(2)(iv).

The record reflects that the director sent her notice of intent to deny, dated February 7, 2006, to the applicant at his address of record. The director sent this notice via certified mail with a request for a return receipt. The director complied with the procedural requirements for the service of this notice as delineated in the regulations at 8 C.F.R. § 103.5a.

The burden is on the applicant to establish by a preponderance of the evidence that he is eligible for temporary resident status under section 245A of the Act. 8 C.F.R. § 245a.2(d)(5). The applicant was afforded 30 days to provide additional evidence to overcome the intended basis for denial. However, the applicant failed to respond the notice of intent to deny. The director denied the application on July 29, 2006 for the reasons stated in the notice of intent to deny. A review of the decision reveals that the director accurately set forth a legitimate basis for the denial of the application.

As stated in 8 C.F.R. § 103.3(a)(3)(iv), any appeal that is patently frivolous, will be summarily dismissed. The applicant's assertion that he never received the notice of intent to deny is patently frivolous since evidence in the record shows that the director sent this notice to the applicant at his address of record. The appeal must therefore be summarily dismissed.



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