identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

PUBLIC COPY

L 1

FILE: [redacted] Office: LOS ANGELES Date: JUN 10 2009
MSC 05 244 15432

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 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.

John F. Grissom
Acting 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 Director, Los Angeles. 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, and a Form I-687 Supplement, CSS/Newman (LULAC) Class Membership Worksheet. The director denied the application because the applicant did not establish that he continuously resided in the United States for the duration of the requisite period.

On appeal, restates his claim and argues that he did not receive the director's denial notice.

The record shows that the director did not send her March 30, 2007 decision to the latest address provided by counsel on Form G-28, Notice of Entry of Appearance as Attorney or Representative, submitted on December 28, 2006. However, the director's error is harmless because the decision was furnished to counsel. Additionally, AAO conducts a *de novo* review, evaluating the sufficiency of the evidence in the record according to its probative value and credibility as required by the regulation at 8 C.F.R. § 245a.2(d)(6).

In this case, the director issued the notice of denial on March 30, 2007 and mailed it to the applicant's attorney of record. The appeal was received on May 21, 2007, 52 days later. Therefore, the appeal was untimely filed and is dismissed for this additional reason.

On his Form I-687 filed on June 1, 2005, the applicant states that his only absences from the United States after his first entry in July 1980 were visits to Mexico to see his wife in December 1987 to January 1988 because she was very sick, and to visit his family in December 1998 to January 1999. However, his Form G-325 A, Biographic Information, he signed on March 10, 2002 indicates that he was married in Mexico on August 22, 1982. Additionally, the fact that his two daughters were born in Mexico on May 26, 1982 and July 7, 1984 indicates that he was residing in that country in 1981 and 1983. The record contains a Form I-860, Notice and Order of Expedited Removal, dated January 30, 1999 determining the applicant is inadmissible to the United States because he falsely represented himself to be a citizen of the United States to benefit himself under the Immigration and Nationality Act, specifically, to gain entry into this country. A Form I-296, Notice to Alien Ordered Removed/Departure Verification, reflects that he was removed from the United States to Mexico on January 30, 1999 at Nogales, Arizona. The applicant did not list this departure from this country on his Form I-687. The director correctly

determined the applicant has not established that he continuously resided in the United States for the duration of the requisite period.

Section 212(a)(6)(C) of the Act provides:

> Misrepresentation. – (i) In general. – Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

In addition, the applicant is inadmissible as he has violated section 212(a)(6)(C)(i). As noted above, the record of proceedings reflects that the applicant sought to enter the United States by falsely claiming United States citizenship. While this ground of inadmissibility may be waived, the applicant would remain ineligible for temporary resident status as discussed above.

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 that the director accurately set forth a legitimate basis for the denial of the application. On appeal, the applicant has not addressed the grounds stated for denial, nor has he presented additional evidence. The appeal shall therefore be summarily dismissed.

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