U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

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DATE: JUN 05 2012 Office: DALLAS FILE: [redacted]

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 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.

Elizabeth McCormack

Perry Rhew
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, Dallas. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record indicates that the applicant filed a Form I-687 Application for Temporary Resident Status on December 30, 2005. On October 22, 2006, the director denied the application noting that the applicant failed to respond to the director's notice of intent to deny (NOID). Thus, the director indicated that the application was abandoned. On May 12, 2011, the director issued an amended decision and denied the application indicating that the applicant failed to establish by a preponderance of the evidence that he entered the United States before January 1, 1982 and continuously resided in an unlawful status in the United States for the requisite period.

On October 12, 2010, U.S. Citizenship and Immigration Services (USCIS) informed the applicant that, pursuant to a recent court order, applications for temporary resident status may not be denied based on abandonment.[1] The applicant was informed that he was entitled to file an appeal with the AAO which must be adjudicated on the merits.

On appeal, counsel states that the applicant was not informed of his right to appeal the director's decision. Counsel submits employer letters on appeal.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

On March 29, 2012, the AAO issued a NOID informing the applicant of the deficiencies in the record and providing him with an opportunity to respond. No response has been received.

In an attempt to establish continuous unlawful residence since before January 1, 1982 through the end of the relevant period, the applicant provided written statements from employers. The record contains evidence dated after the requisite time period. The evidence dated after the requisite time period is not probative of the applicant's residence during the requisite time period.

The record of proceeding contains three employer letters. The record contains a letter transmitted by facsimile on [redacted] letterhead signed by [redacted] and dated December 28, 2010. In his letter, [redacted] states that the applicant worked for him from May 1981 to November 1985. [redacted] states that he does not have any records from that time period.

[1] On December 14, 2009, the United States District Court for the Eastern District of California ruled that United States Citizenship and Immigration Services (USCIS) may not apply its abandonment regulation, 8 C.F.R. § 103.2(b)(13), in adjudicating legalization applications filed by CSS class members. *See, CSS v. Michael Chertoff,* Case 2:86-cv-01343-LKK-JFM.

[redacted] lists various ranch duties that the applicant performed while working for him. The record also contains a letter on [redacted] signed by [redacted] and dated December 11, 2006. In her letter, [redacted] states that the applicant worked for her in 1982. [redacted] provides no additional information regarding the applicant's employment. The record also contains a handwritten letter signed by [redacted] and dated January 3, 2011. In his letter, [redacted] states that the applicant worked for him from December 1985 to November 1988 as a tree digger and planter. [redacted] states that he no longer has employment records for that time period.

The letters fail to meet certain regulatory standards set forth at 8 C.F.R. § 245a.2(d)(3)(i), which provides that letters from employers must include the applicant's address at the time of employment; exact period of employment; whether the information was taken from official company records and where records are located and whether USCIS may have access to the records; if records are unavailable, an affidavit form-letter stating that the employment records are unavailable may be accepted which shall be signed, attested to by the employer under penalty of perjury and shall state the employer's willingness to come forward and give testimony if requested. The letters submitted do not include the applicant's address at the time of employment and were not signed under the penalty of perjury with a statement of willingness to testify and can only be accorded minimal weight as evidence of the applicant's residence in the United States for the duration of the requisite period.

Beyond the decision of the director, the applicant has not established that he is admissible. Section 245A(a)(4)(A) of the Act requires that the applicant establish that he is admissible to the United States as an immigrant in order to be eligible for temporary resident status. On September 23, 1997 the Immigration Court ordered the applicant's removal from the United States. The applicant was formally removed on October 6, 1997. On November 26, 2004, the applicant was arrested and charged with illegal entry after removal in violation of 8 U.S.C. § 1326(a). On November 28, 2004 the previous removal order was reinstated in accordance with section 241(a)(5) of the Act. The applicant filed the Form I-687 on December 30, 2005. The applicant sought admission to the United States on December 30, 2005, a period within 20 years of the date of his removal as ordered by the immigration judge. Accordingly, the applicant is inadmissible as an immigrant under section 212(a)(9)(A)(ii)(I) of the Act and ineligible for temporary resident status under section 245A(a)(4)(A) of the Act. Although this ground of inadmissibility may be waived pursuant to section 245A(d)(2)(B) of the Act, the record contains no evidence that the applicant requested such a waiver.[2]

Further, an alien who has been convicted of a felony or three or more misdemeanors in the United States is ineligible for temporary resident status. 8 C.F.R. § 245a.2(c)(1). In adjudicating the applicant's appeal, the AAO finds that the record of proceeding contains evidence that he has the following criminal history:

[2] The form used to apply for a waiver of inadmissibility is the Form I-690, Application of Waiver of Grounds of Inadmissibility Under Sections 245A or 210 of the Immigration and Nationality Act.

- On June 12, 1997, the applicant was convicted of 8 U.S.C. § 1325 – *Illegal Entry*, a misdemeanor, by the U.S. District Court, Western District of Texas, Del Rio Division (case no. [redacted]). The record contains a disposition for this conviction. The disposition states that the applicant was sentenced to 120 days imprisonment by the U.S. Bureau of Prisons.

- On December 1, 2004, the applicant was convicted of 8 U.S.C. § 1325 – *Illegal Entry*, a misdemeanor, by the U.S. District Court, Western District of Texas, Del Rio Division (case no. [redacted] The record contains a disposition for this conviction. The disposition states that the applicant was sentenced to 180 days imprisonment by the U.S. Bureau of Prisons.

These two misdemeanors do not make the applicant inadmissible.

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. Given the paucity of credible evidence contained in the record and the applicant's failure to respond to the NOID, the appeal will be summarily dismissed.

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