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U.S. Citizenship
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Services

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FILE: [REDACTED]
MSC-05-188-13429

Office: NEW YORK

Date: **APR 23 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:

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.

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 she 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 her 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 claims to have never received a copy of the director's notice of intent to deny. The applicant requests a copy of the notice of intent to deny and additional time to respond to this notice.

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 her 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 July 18, 2006, to the applicant at her address of record. This notice contains the basis for the intended denial of the application. The director sent this notice via certified mail with a request for a return receipt for proof of delivery. On August 14, 2006, the post office returned the notice to the director as unclaimed. The director denied the application on August 23, 2006 for the reasons stated in the notice of intent to deny.

The burden is on the applicant to establish by a preponderance of the evidence that she is eligible for temporary resident status under section 245A of the Act. 8 C.F.R. § 245a.2(d)(5). The director notified the applicant of the basis for denial in her 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. 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. Given that the notice was properly served, it was the applicant's responsibility to claim the notice at the post office.

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 she never received the notice of intent to deny is patently frivolous since evidence in the record shows that the director properly served this notice. The appeal must therefore be summarily dismissed.

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