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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
MSC-05-169-10329

Office: NEW YORK

Date: **JAN 02 2008**

IN RE: Applicant: [REDACTED]

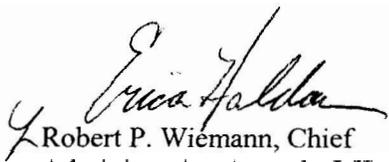
APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:

SELF-REPRESENTED¹

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the office that originally decided your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, 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.


Robert P. Wiemann, Chief
Administrative Appeals Office

¹ Because a Form G-28, Notice of Entry of Appearance as Attorney or Representative, has not been submitted by the individual who signed the applicant's Form I-694, Notice of Appeal of Decision is not authorized to represent the applicant. Therefore, the applicant shall be considered as self-represented and the decision will be furnished only to the applicant. While the record contains a G-28 Notice of Appearance of Entry of a Representative from [REDACTED], this G-28 does not indicate that [REDACTED] is an attorney or accredited representative.

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. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

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, on March 18, 2005. 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. Specifically, the director noted in her Notice of Intent to Deny (NOID) that her office did not find the affidavits submitted in support of the application to be credible. She noted that the other evidence submitted in support of his application either was not relevant or pertained to a point in time after January 1, 1982 and therefore did not prove that the applicant entered before that date. The director granted the applicant thirty (30) days within which to submit additional evidence in support of his application. As the director did not receive any additional evidence within that time period, she found he did not overcome her reasons for denial as stated in her NOID. Therefore, the director denied the application as 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.

An applicant for Temporary Resident Status may appeal an adverse decision on Form I-694. 8 C.F.R. § 245a.2(o). The applicant may be represented by an attorney or representative in accordance with 8 C.F.R. § 292. 8 C.F.R. § 103.3(a)(1)(iii)(B). The person acting in a representative capacity must be “authorized and qualified to represent,” and a notice of appearance must be signed by the applicant to authorize representation in order for the appearance to be recognized by the U.S. Citizenship and Immigration Services (CIS). 8 C.F.R. § 292.4.

The regulations further provide that every application, petition, appeal, motion, request, or other document submitted on the form prescribed by the Department of Homeland Security regulations shall be executed and filed in accordance with the instructions on the form; and the instructions are incorporated into the particular section of the regulations requiring its submission. 8 C.F.R. § 103.2(a)(1). Form I-694 includes the following instruction:

Any Form I-694 that is not signed or accompanied by the correct fee will be rejected with a notice that the Form I-694 is deficient. [An applicant] may correct the deficiency and resubmit the Form I-694.²

² Note, however, that a rejected application or petition will not retain a filing date. 8 C.F.R. § 103.2(a)(7). As Form I-694 must be filed within 30 days of the notice of decision, it would not be possible to timely resubmit the Form I-694 in this case.

In this case, the Form I-694 is not signed by the applicant, but rather by [REDACTED], who identifies herself as the applicant's attorney. However, the record does not contain a Form G-28 Notice of Appearance as Attorney or Representative from [REDACTED] to indicate that she is an attorney or representative who is authorized to represent the applicant. On December 7, 2007 the AAO contacted the offices of [REDACTED] requesting that the office submit a completed Form G-28 signed by [REDACTED] and the applicant. In this correspondence, the AAO indicated that if it did not receive this Form G-28 within five (5) business days, the applicant would be considered unrepresented. As of December 27, 2007, the AAO has not received a Form G-28 from [REDACTED]. As the appeal has not been signed and filed by the applicant or by any authorized representative, the appeal is deficient and has not been properly filed. The appeal, therefore, must be rejected.

ORDER: The appeal is rejected.