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U.S. Department of Homeland Security
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U.S. Citizenship
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Services

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[REDACTED]

FILE: [REDACTED]
MSC-05-208-10347

Office: LOS ANGELES

Date: **JUL 09 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:

[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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

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, 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 (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. Specifically, the director noted that her officer issued a Form I-72 Request for Additional Evidence to the applicant. However the director found that the applicant's response to this Form I-72, when considered with other evidence in the record did not allow the applicant to meet her burden of proof. Therefore, director denied the application, finding that the applicant was not eligible to adjust to Temporary Resident Status pursuant to the terms of the CSS/Newman Settlement Agreements.

It is noted that the director alluded to the issue of class membership in the decision. Since the application was considered on the merits, the director is found not to have denied the applicant's claim of class membership.

The AAO notes that the director erred by including a typographical error in her decision. The director, noting that the applicant did not indicate that she was absent from the United States during the requisite period on part #32 of her Form I687, erroneously stated that the applicant showed she did not "live the country" rather than stating that she did not "leave the country" during that time. A review of the record shows the applicant indicated she did not have any absences from the United States during the requisite period. Therefore, it is concluded that the inclusion of the word "live" was a typographical error. However, it is noted here that this error did not cause the applicant harm. The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The AAO withdraws the word "live" from the director's decision and replaces it with the word, "leave." The AAO also notes that the director also erroneously noted in her decision that the applicant's printout from the Social Security Administration pertained to the years 1985 until 1989, when, in fact, it pertains to the years 1984 to 1991.

On appeal, the applicant's attorney asserts that the director's decision contains a typographical error, where the director wrote the word "live" instead of the word "leave." He argues that this error creates ambiguity such that the director's decision should be remanded to correct this error. He goes on to say that he cannot rebut the director's decision because it contains this error.

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.

On appeal, the applicant has not presented additional evidence. Nor has she addressed the grounds stated for denial. Though the applicant's attorney has identified a typographical error in the director's decision and argues that this error caused that decision to be misleading, the director stated that the application was denied because the applicant failed to submit sufficient evidence to prove that she had continuously resided in the United States for the duration or the requisite period. This statement was clear and did not contain any typographical errors. The applicant did not address the grounds for her denial nor did she state that the director was in error in concluding that the applicant failed to meet her burden in her appeal. The appeal must therefore be summarily dismissed.

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